# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~325~~. 72.

TOMAS GARROZI, JUANA MARIA GONZALEZ, AND DOMINGO PIAZZI, APPELLANTS,

*vs.*

JUANA DASTAS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

FILED JULY 5, 1905.

(19,829.)

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1 In the District Court of the United States for Porto Rico.

JUANA DASTAS DE GARROZZI
*vs.*
TOMAS GARROZZI Y PIETRI, DOMINGO PIAZZI Y PIETRI, and JUANA MARIA GONZALEZ.

(Removed from the District Court of Ponce, P. R.)

*Record From the District Court of Po-ce, P. R.*

(Filed January 13, 1902.)

To the Honorable District Court of Ponce:

I, Luis Llorens Terres, lawyer, representative of Mrs. Juana Dastas, who is married and of age and a resident of this city, appear before your Court, and in accordance with the precepts of the law, I state:

That I bring the present suit against Mr. Thomas Garrozi y Pietri, Mrs. Juana Maria Gonzalez and Mr. Domingo Piazza y Pietri, all of whom are of age and residents of Yauco, for nullification or rescission of contract of purchase and sale of real-estate and mortgage credits. Said suit I establish on the following facts:

First. Mr. Tomas Garrozzi y Pietri and Mrs. Juana Dastas contracted cannonical matrimony at Yauco on the twelfth of May, *May*, 1886, without stipulating the conditions of the marriage union, for which reason said matrimony is understood to have been contracted under the legal rule of marriage profits—Mrs. Dastas dwelt at the domicile of her husband until the 28th of November 1898, at which date, on account of disagreements which occurred between husband and wife they became separated in fact, without judicial intervention.

Second. At the time at which Mrs. Juana Dastas left her domicile, or rather separated from her husband they possessed deeds registered in the name of the husband acquired during the nuptial union viz; the following property:

2 A. Two masonry houses located in Borinquen street, Yauco, No. 40 and 42 of the Municipal register.

B. A plantation dedicated to sugar cane named Maria Antonia located in the barrios of Guanica and Susua Baja of the municipal district of Yauco with houses for steam engines and for sugar cane, sugar house and other appurtenances, which property he acquired by *pacto de retro*, or conditional sale in favor of Mr. Gustave Ramirez de Arellano and his son Mr. Quintin G. Ramirez for the price of 80,135 pesos P. R. Currency, which the sellers could return at the end of eight years, due 1907.

C. A mortgage credit on the coffee plantation called Luisa, located in the Barrio of Rancheras of Yauco for the price of 20,000 pesos P. R. currency, which he purchased from Marcial Santoni y Ortiz,

which mortgage credit, together with other two of the same kind which the owners of the same plantation were owing, (which owners were Mr. Tomas Olivari Santo and his mother Mrs. Adela of the same name) became a full lien on said property in favor of Garrozi in consequence of a suit of ejectment which he brought against them in order to establish his credit.

D. Another mortgage credit for 23,680 pesos P. R. currency upon the coffee plantation named Leonor in the Barrio of Aguas Blancas en Yauco, belonging to Mr. Francisco Mejia y Rodriguez.

E. Another credit of 12,000 pesos P. R. currency secured by a mortgage upon the coffee plantation named Juanita in the same Barrio of Aguas Blancas of Yauco, the property of Mr. Isidoro Pintado.

F. Another mortgage credit of 10,470 pesos 30 cents P. R. currency upon the coffee plantation named "Mercedes" which is composed of three portions or parcels of land, two of which are located in the bar-io Pasto of Guayanilla and the other portion with a surface of 24 cuerdas located in the barrio of Aguas Blancas of Yauco belonging now to Mr. Mercedes Lluveras.

All these plantations and mortgage credits were inscribed or registered in the name of Mr. Tomas Garrosi y Pietri in the register of property in the district of San German, except the two portions of land which form part of the plantation Mercedes which are located in the barrio Pasto of Guayanilla, which were in the register
3 in this district. The aforementioned property was acquired during the matrimony of Mrs. Juana Dastas.

Third. At the latter part of the month of December 1899, Mr. Garrosi began to prepare certain data which he considered necessary to unjustly bring criminal suit for adultery against his spouse, and doubtless he determined also to transfer his goods to other persons in order to save himself the responsibility which might arise against him from taking such steps.

And this he did in respect of the two masonry houses mentioned in paragraph letter A. of fact two, of this writing by transferring them to his natural sister Juana Maria Gonzalez, through public instruments before the Notary of San German, Mr. José R. Nazario de Figuerea, on the 26th of December, 1899, in which he confessed as having previously received the price of the sale, namely 6,000 pesos P. R. currency as stipulated as the said price of the city property.

Fourth. There was a suit before the District Court of Ponce brought for adultery interposed by Garrozi against his wife and Miguel Angel Rivera, a verdict being found acquitting the accused on the 17th day of February, 1900. At that time Mr. Tomas Garrosi registered in the name of his mentioned natural sister Juana Maria Gonzalez on the 28th of May, 1900, and before the Notary of Yauco Mr. Manuel Silis, the sugar plantation Maria Antonia mentioned in said fact No. 2 of this suit under letter B making its alienation for the sum of 48,000 dollars which Garrosi confessed to have received, reserving Messrs. Ramirez the right which they had in

virtue of *pacto de retro* stipulated in the purchasing deed of said property.

Fifth. Afterwards Mr. Garrozi ceded in favor of his uncle Mr. Domingo Piazza y Pietri the mortgage credits and titles which are related in the paragraphs letters C, D, E, and F of fact No. 2 of this writing, alienating them in the following manner: Through public instrument in Yauco before the Notary Mr. Manuel Selis on the 1st and fourth of August of the year 1900 he transferred to Piazza the mortgage credit and the titles upon the plantation "Luisa" mentioned in paragraph letter C, through another deed of the
4 second of the same month of August 1900 and before the same notary of Yauco, Solis, he transferred to said Piazza the mortgage credit, upon the plantation Leoner referred to in paragraph letter D.—Through another deed on the first of August 1900 he transferred to the same Piazza before the notary Solis of Yauco the mortgage credit of the plantation Juanita referred to in paragraph letter E—and through writing in Ponce on the 31st of July of the same year 1900 before the notary Mr. Rafael Leon y Paz, he transferred to Piazza the mortgage credit upon the coffee plantation Mercedes, referred to in paragraph letter F.

Sixth. After the alienations which appear to have been made by Garrezi to his relations Juana Maria Gonzalez and Domingo Piazza, he has continued in possession, administration and enjoyment of the property sold, and in order to cover these acts with the apparent fact that he is not the owner of it, he obtained general powers of attorney from both purchasers, which mandates appear in public instruments.

Seventh. Mr. Thomas Garrezi y Pietri, with the general power of attorney granted to him by Juana Maria Gonzalez, sold back to Mr. Quintin G. Ramirez y Ramirez, through public deed in this city before the notary, Mr. Angel Acosta Quintere, on the second of July of the present year, the sugar plantation Maria Antoniam, and received before said notary and the instrumental witnesses, the price of 48,000 dollars, part of which he spent in buying drafts on Europe, which he obtained from the Banco Credito y Aherro Penceno of this city, which drafts he obtained and were drawn in his private name; and afterwards he also sold in his own name other drafts against the funds derived from that sale which he had deposited in Paris. This fact comes to corro-bate in part the affirmation which will make about similation of these contracts.

On the other hand, neither Juana Maria Gonzalez nor Domingo Piazza who figure as purchasers of all the property belonging to the consorts Garrozi-Dastos, have paid the price of the purchase. Nor is it true that they have acquired such plantations and credits;
5 for the first of said persons who have lived since she was very young under the protection of Garrozi, sometimes in the capacity of a sister and lately in the capacity of a house keeper, despite her simulated condition of great prop-ietress has never been able to dispose of other means of subsistence nor has she had any other resourses, than those granted to her by Mr. Garrozi and his spouse.

And Mr. Piazza, who is first uncle of Mr. Garrozi arrived at this country a short time ago in such conditions of poverty that his passage from Corsica to Yauco was paid with the funds which the same Mr. Thomas Garrozi sent to him to that effect.

From all of which it is very apparent that Mrs. Juana Maria Gonzalez and Mr. Domingo Piazza have been and are actually insolvent, and therefore it is impossible that they could have paid the sums which Garrozi has confessed in his deeds to have received from them before the execution of the same and as a price of the plantations and credits sold. A good proof that the contracts are simulated is offered to us by the same Mr. Garrozi, who in spite of such contracts, continues in possession of the plantations, and exercises on them acts of administration in his own proper name, making contracts for the purpose for preserving and improving same, not in the capacity of attorney in fact for other persons, but as real owner of the same plantations. We shall show that one of the houses that he transferred to Juana Gonzalez which was almost destroyed by a fire which has lately occur-ed at Yauco, has been reconstructed at the expense of Garrozi, who lives in it, after acquiring in his private name the necessary materials for its reconstruction, and after having contracted and paid the working-men with money from his private purse.

He has also in his private name advance several claims against the heirs of Mr. Francisco Mejias for the reason of the suit of ejection which he has brought for the collection of the mortgage credit which to-day appears in the name of Mr. Piazza: That in the same manner he has performed other acts in the plantation Luisa after its appearing as sold, which undoubtedly proves the simulation of contract as above mentioned.

6 Moreover Mr. Tomas Garrozi who says to have received the amount of the registered sales nevertheless, when he was officially required to furnish with alimony as requested by the Court to his wife, has stated that he is absolutely without a cent and without property of any kind, which would be impossible if he had really received the payment of the sales above mentioned which amount approximately 150,000 pesos P. R. currency; said Garrozi not even receives salaries of any kind or retribution as commanding administrator of the rich property which is said to belong to Juana Gonzalez and Domingo Piazza, who are publicly and notoriously known to be only instruments in the hands of Garrozi to conceal the property of the married union with the prejudice of the legitimate rights of his spouse.

Eight. Mr. Tomas Garrozi and Mrs. Juana Dastas separated in fact without judicially intervention and on account of disagreements as we have already said on the 28th of November, 1898.—At that time and by order of her husband Mrs. Juana went to live with her sisters Luisa and Josefa Dastas in a house which her husband loaned to them, and there she remained until the 22nd. of December of the following year when she removed to the city of Ponce.—For this reason on the 12th of January 1900, Mr. Tomas Garrozi formulated a criminal suit of adultery against his wife and the case

was tried before this Court, being acquitted of said charges on the 17th of February of the same year.—On the 21st of May of the current year Mr. Tomas Garrozi brought suit for divorce from his wife before this Court of justice and as the defendant formulated a reconvention founded on the adultery of her husband and ill treatment by word and deed, said proceedings are now pending, in virtue of which the wife is deposited in accordance with the provision of the law and she had to receive, according to judicial mandate 75 dollars payable each month in advance as alimony for her maintenance, in accordance with the decree dated the 15th of July of the present year.

In the same proceedings, and by resolution of the 15th of July last, there was declared the right of the defendant to per-
7 ceive legal expenses for the divorce suit. In order to make the first monthly payment of alimony effective, there was attached against Garrosi certain furniture of the marriage domicile, which was claimed to belong to Mrs. Juana Maria Gonzalez, on account of the sale which the same Garrosi had made to her through an-extra judicial and private document; but this third claim has been declared to be null and of no effect, and in consequence legal proceedings were taken against the furniture which was finally adjudicated to Mrs. Dastas for the payment of the seventy five dollars above mentioned. She remains still without receiving the alimony for the last four months, because in the requirements against the husband for payment he appears insolvent, as he has alienated all his property, or most of it, during the beginning of the month of August 1900, at which time he was legally obliged to grant alimony to his wife, inasmuch as he had already placed her under criminal proceedings as above mentioned.

Ninth. Mr. Garrosi owes therefore to his spouse the alimony for the months of July to September of the present year, which, according to the investigation of the Court, amounts to 225 dollars. There is owing to her also the sum of 598 pesos P. R. currency, which is the amount of the account of the legal expense approved by the Court in the suit of divorce until the 7th of August last besides the expenses which have been incurred afterwards in said suit; and no pr-perty is found in his name to satisfy that sum which he obstinately refuses to pay. In virtue of what we have stated above Mrs. Juana Dastas is bound to ask for the annulation or rescission of the contracts made between the defendants, and she founds her petition on the following presepts of law:

1st. A married woman needs no license to sue or defend herself in suit with her husband. Article 60 of the Civil Code.

2nd. In default of a contract on property, the marriage is understood to have been contracted under the rule of marriage profits. Article 1315.

3rd. Those are marriage profits which have been acquired
8 by hard work during the marriage at the costs of the common fund, even if the accusation has been made by one only of the consorts, and the produce, rents and interests received during

the marriage, even if they proceed from the private property of each one of the consorts. Article 1401 Civil Code.

4th. The husband is the administrator of the marriage profits, and besides the powers which he has as administrator he shall be able to alienate and bind or lien all the goods or property of the marriage profits without the consent of the wife.—Nevertheless any alienation or agreement made upon said goods or property by the husband in contrevention of this code, or in order to defraud the wife shall not prejudice the latter or her heirs. Article 1412 and 1413 of the Civil Code.

5th. There is no contract unless there exists among other requisites the cause of the obligation by which it is established. And in contracts where property is involved, the cause for each contracting parties shall be understood to mean the loan or promise of a thing or service by the other part-. Article 1261 and 1274 Civil Code.

6th. The contract without cause or with illicit cause, produce no effect of any kind. Article 1275 Civil Code.

7th. The expression of a false cause in the contracts shall produce nullification. Article 1276 Civil Code.

8th. The contracts may be annulled whenever they have some of the defects which invalidate them according to law. Article 1300.

9th. The action for nullification of contracts may be exercised by those who are bound principally or subsiderally in virtue of them. Article 1302 Civil Code; but this precept does not exclude the right of those third parties who may exercise this action of nullification whenever they are prejudiced by the obligation.—Sentence or judgment of the Supreme Court of Spain dated September 23rd, 1895.

10th. The contracts validly made may be rescinded in cases provided by law.—and among others are rescindable those contracts made to defraud the creditors when these cannot collect what
9 is owing to them in any other way.—Article 1290 and 1291 Civil Code.

11th. Although the action of rescission and that of nullification are incompatable, this is not so when the rescissory action is formulated subsiderally and *at cautelam* in case that of nullification does not have effect. Sentence of the Supreme Court of Spain on the 28th of January 1892.

12th. The creditors m-y inpu*ung* the acts which the debtor may have carried out in defraud of their rights. Article 1111 of the Civil Code.

13th. He who has acquired in bad faith things ali*ane*ted by defraud of the creditors shall indemnify the latter for the damages which said alienation may have costs to them, whenever through any cause it were impossible to return said thing. Article 1293 Civil Code.

14. The contracts upon the transfers of title of property made after the abolition of the impost of the Royal Dues without cause or with illicit cause according to laws, and with the intention of defrauding the creditors of any of the contractors upon said goods or property shall be reputed simulated contract. Article 1st of the Judicial Order of the 28th of March 1899.

15. The simulated contract or those celebrated with false cause, are contrary to law. Judgment of the Supreme Court of Spain 31st of October 1865.

16. The costs shall be paid by those parties whose pretentions have be*ing* totally rejected. General Order 118.

Wherefore, exercising first the action of nullification and *at cautelam* that of rescission of the contracts above mentioned which action are of my competence as legitimate wife of Mr. Tomas Garrozi, as well as creditors of the same gentlemen; and in vertue of the foregoing facts and legal precepts,—I pray the Court to admit this writing with the three accompan-ing copies and to consider this suit of nullification or rescission against Mr. Tomas Garrozi y Pietri Mrs. Juana Maria Gonzalez and Mr. Domingo Piazza y Pietri, as interposed be good enough to accept me as the party in the representation which I show, order a notification of this suit to the de-
10 fendants summon*ong* them by means of decree to be issued to the Municipal Court of Yauco where the parties reside, in order that they may appear to answer it if they deem it right within twenty days, and in due time to dictate sentence declaring the nullification of the contracts of purchase and sale made through public instruments referred to in this writing; or, if said nullification was deemed to be wrong, do declare them valid the rescission of the same contract with the imposition of the costs in each case upon the defendants, as this is in accordance with justice and right.

Item 1. It is right and I pray the Court to be good enough to receive this suit for trial in due time.

Item 2. In accordance with article 42 of the mortgage law, the complainants desire that this present suit be noted down in the registrar of property in order to avoid that the property, the ali*an*ation of which is impu*n*ged in this suit, be transferred to a third party and I pray the Court to be good enough to agree to these proceedings ordering a duplicate mandate to be issued to the Registrar of P*o*rperty of San Geman in order that he may take the corresponding note of this suit and mark it in the entries of registration of the property and mortgage rights mentioned in fact No. 2 in this writing, under the letter- A, C, D, and E; and the part located in that District of the property comprised in the paragraph letter F; and another mandate to the Registrar of this City for an *i*qual annotation in respect of that part of the property letter F, which is located in the Barrio Pasto of Guayanilla, belonging to this District, this is justice which I ask.

Item 3. The annotation of this suit in the Registrar of property is so urgent that my client has been obliged to present it without having previously tried the act of conciliation in accordance with Article 459 of the Civil Code, for fear of seem her rights trampled upon by a new simulated sale.—Wherefore I pray the Court to be good enough to grant the annotation sol-cited and to order the issuance of the nec*a*ssary mandates without prejudice of suspending the costs of the proceedings until the certification of the act of
11 conciliation provided for the continuation of the declarative judgment be presented.

Item 4. In accordance with the provision Article 1408 of the Civil Code, and the jurisprudence which regulates the rights and regulation of the consorts the husband has to pay to the wife the amount of the expenses incurred in the law suits which she may feel herself compelled to sustain in defence of her rights, therefore it is right and I pray the Court to be good enough to consider the position for expenses for this suit as having been made, and to grant that Mr. Tomas Garrozi as administrator of the marriage union with Mrs. Juana Dastas pay to her the expenses necessary for the carrying out of this suit.

Item 5. I appoint as agent for this business Mr. Manuel Catala, and I pray the Court to be good enough to accept his appointment in accordance with the law.

This is justice which I ask of Ponce on the 4th of October 1901.

Respectfully, LUIS LLORENS TORRES.

*Proceeding.*

The above has been presented together with a simple copy to-day October 4, 1901 at the last hour.—I certify.

GAUTIER.

*Filing.*

The above was filed under number 341 on the 7th day of October to which I certify.

GAUTIER.

*Service.*

Ponce October 10, 1901.—The above writing has been presented with the simple copies which accompany it and as the reason given on the third item is not acceptable, when the act of conciliation comes about, the principal and other items it shall be provided for.—It was agreed and signed by the judges of the Court to which I certify.

ISIDORO SOTO NUSA,
R. SANCHEZ MONTALVO,
CARLOS FRANCO SOTO,
LUIS GAUTIER.

*Notification.*

On the 18th of October, I notified attorney Llorens of the foregoing proceeding.

Signed and certified. LUIS LLORENS TORRES.
RODRIGUEZ.

Mr. José Manuel Justo y Sans Secretary of the Municipal
12 Court of Yauco, do certify that in the books of acts of conciliation corresponding to the act of this present year there is one which copied literally says as follows:—

No. 7 at Yauco. On the 29th day of October 1901, before the Municipal Judge Mr. Juan Mattei Rodriguez and before me the Secretary there appeared Mrs. Juana Dastas, who is married of age, a r-sident of Yauco, residing at present at Ponce, on account of her being judicially deposited, accompanied by her guardian Mr. Manuel Catalá Dueña, of age, widower resident of Ponce, in order to hold an act of conciliation with her husband Mr. Tomas Garrozi y Pietri Mrs. Juana Maria Gonzalez and Mr. Domingo Piazza y Pietri; the two first one being domiciled at Beringuen St. of this town and the last one in the barrio of Rancheras of this municiapl district, in order that they may agree to the nullification and rescission of the sales made by Garrozi to *to* Juana Maria Gonzaleez, in a deed of the 26th *od* December 1899, before the notary of San German, in respect to the two city properties located in Beringuen St. of the town of Yauco, and in respect of the sugar estate "Maria Antonia" in the barioes of of Guanica and Susua-Baja by deed at Yauco, before the notary Solis on the 28th of May 1900; as well as of the other sales made by Garrozi to Piazza of the coffee estate Luisa through public instrum*e*nt at Yauco on the 1st of August 1900, of mortgage credits upon the estates "Leonor and "Juanita" located in the barrio of "Aguas Blancas" of Yauco sold through deed on the 2nd and 1st of August 1900 respectively, before the same notary of Yauco Mr. Manuel Solis and of another mortg*e*g- credit upon the plantation Merceres in the Barrio Aguas Blancas of Yauco and Pastos of Guayanilla ceded to Piazza through deed before the notary at Ponce Mr. Rafel Leon on the 31st of July 1900; and in which sales he confessed to have received the price. And inasmuch at the hour of 2 in the afternoon, appointed for this act, has expired, and the defendants Mr. Tomas Garrozi y Pietri Mrs. Juana Maira Gonzalez and Mr. Domingo Piazza y Pietri have not appeared, nor have they stated just cause for their non-appearance the Municipal Judge in
13 accordance with articles 468 and 472 of the law of civil proc*e*edure put an end to the act tried without effect condemning the defendants to the payment of the costs and ordering that the present proceeding be drawn up, a copy of which certification shall be given to the party who may ask for it.—Signed by those who were present*s*, then by the Judge before me to which I certify.

J. MATTEI.
JUANA DASTAS.
M. CATALA.
J. M. JUSTOS.

It corresponds well and faithfully with the original or its contents to which I refer.—And in order to deliver to Mrs. Juana Dastas at her request I issue the present approved by the Municiapl Judge of Yauco on the 29th of October 1901. Approved, the municipal Judge.

J. MATTEI.
J. M. JUSTOS.

(There are several stamps.)

To the Court:

I, Luis Llorens Torres, attorney for Mrs. Juana Dastas, in the declarative suit which -he has began against her husband Mr. Tomas Garrozi, Mrs. Juana Maria Gonzalez and Mr. Domingo Piazza y Pietri about nullification or rescission, in accordance with legal proceedure I declare, that by decree of the 10th of the current month, issued on the initial writing of this suit, it was agreed to act without providing for the principal and other items, until the act of conciliation which had to be done previously which was not accompanied with the suit, might be presented. Now inasmuch as this legal requisite has been fulfilled, I accompany this writing with a certification sh*w*oing that there has been tried without effect before the munici*ap*l Judge at Yauco the conciliation relative to this premises; and I pray the Court to be good enough to accept as complimented the precepts of previous conciliation provided in Article 459 of the Civil Proceedure; and in consequence to provide what has been solicited in the writing of the suit presented on the 4th of the present month.—This is justice which I ask at Ponce, on the 31st day of October 1901, respectfully.

LUIS LLORENS TORRES.

The foregoing has been presented to-day the 2nd of November of the present year with the certification of the act of conciliation to which I cer-ify.

GAUTIER.

*Notification.*

On the 4th of November, I gave an account to the Court to
14 which I certify.

GAUTIER.

*Service.*

Ponce, November 4th, 1901.—The foregoing writing has been duly represented with the certification of the act of conciliation accompanying it; let it be united with the respective proceedings and in providing for the writing for the 4th of October ultimo, the declarative suit in which the attorney Luis Llorens Tores takes part in the name of the person from whom he appears, is hereby established. Service of the same is hereby given to Mr. Tomas Garrozi y Pietri Mrs. Juana Maria Gonzalez and Mr. Domingo Piazza y Pietri in order that they may file a reply within 20 days, during which they shall also appear in the proceedings; let there be an order issued to the municipal Judge of Yauco in order that he may summon the defendants.

To the first item in due time—To the second item—

Considering that the object of the suit is not comprised in any of the cases marked in Article 42 of the mortgage law, and 88 of the regulations for its execution, there is no ground for the annotation of the suit.

There is no ground for what has been solicited in said item.

To the 5th item, the agent for attorney Mr. Llorens, is hereby appointed namely, Mr. Manuel Catala, and the associate Judge Rafael Sanchez Montalvo, is appointed as Judge instructor. It is agreed — and signed by the Judges of the Court to which I certify.

ISIDORE NUSA.
R. SANCHEZ MONTALVE.
LIBERTAD TORRES GRAU.
LUIS GAUTIR.

*Notification.*

On the 6th of Novemb-r, when the agent Mr. Catala appeared at my office I notified him and read to him a copy of the foregoing decree.

Signed and certified to.

N. CATALA RODRIGUEZ.

*Proceeding.*

On the 8th of November, the letter of mandate was issued and sent to Yauco and was delivered to the agent Mr. Catala for his direction.

Signed and certified to.

MANUEL CATALA RODRIGUEZ.

To the Honorable District Court:

15 I, Luis Llorens Torres, attorney for Mrs. Juana Dastaas, in the declarative suit brought against Mr. Tomas Garrozi, Mrs. Juana Maria Gonzalez and Domingo Piazza about the nullification of rescission of contracts, in accordance with legal procedure, state: That I have been notified of the decree of the writing on which I formulated this suit; and inasmuch as there has been an omission to provide for the petition of the expenses of the suit, comprising the 4th item of said writing I pray the Court to be good enough to admit the petition for expenses of this suit and to grant that Mr. Tomas Garrozi as administrator of the marriage union with my representative, provide her with the expenses which -he has solicited in the 4th item of the writ of suit which I refer.—This is justice which I ask at Ponce, on the 7th of November 1901.

Respectfully, LUIS LLORENS TORRES.

The above has been presented to-day the 11th of November at the last hour to which I certify.

GAUTIER.

On the 12th of November I notified the Court to which I certify.

GAUTIER.

Ponce, November 12th 1901.—The foregoing writing was presented; let it be united with the respective proceedings and considering that the expenses occasioned by the suit which the wife may

have against the husband, have to go the charge of the marriage profits (Article No. 408). The petition for the expenses for the suit are hereby allowed, ordering the expenses which have to be incurred hereafter be justified and regulated in accordance with law. It was agreed and signed by the Judges of the Court, to which I certify.

ISIDORO SOTO NUSA.
R. SANCHEZ MONTALVE.
CARLOS FRANCO SOTO.
LUIS GAUTIER.

On the 22 of November I notified the agent Mr. Catala of the foregoing decree.

Signed and certified to.

M. CATALA RODRIGUEZ.

I, the undersigned acting Secretary her-by certify, that the foregoing copy is accurate in all its vouchers which exist in the declarative proceedings which are on file at this Secretary's office by Mrs. Juana Dastas against Tomas Garrozi y Pietri, Mrs. Juana Maria Gonzalez and Mr. Domingo Piazza y Pietri, about the nullification of contracts; and that the estate of these proceeding- at this date is that which is indicated by the last proceeding inserted.

16 I likewise certify that at this date namely, the 7th of the present month, Lawyer Chas. M. Boerman, presented the writing to the Court praying that it inhibit itself from taking cognizance of these proceedings in favor of the District Court of the United States in Puerto Rico, which petition is now pending before the Court.

And at the request of Lawyer Boerman, I issue the present document at Ponce, on the 11th of January 1902.

(Sig.) GUSTAVE RODRIGUEZ.

There are two revenue stamps cancelled and also the stamp of the District Court of Ponce.

The foregoing is a true and faithful translation of its original to which I certify.

Z. VALS SPINOSA,
*Interpreter, U. S. District Court for Porto Rico.*

*Notice.*

(Filed Jan. 14, 1902.)

In the United States District Court for Porto Rico.

JUANA DASTAS DE GARROZI
*vs.*
TOMAS GARROZI Y PIETRI, DOMINGO PIAZZA Y PIETRI, and JUANA MARIA GONZALEZ.

You will please take notice that on the 13th day of January 1902, the above entitled cause was duly transferred from the District

Court of Ponce, to the United States District Court for Porto Rico, and that the record in said cause has this day being duly filed in the said United States District — for Porto Rico.

Dated 13 of January 1902.

C. M. BOERMAN,
*Attorney for the Defendants.*

To the Attorney for the plaintiff Luis Llorens Esq.

Copy.

*Supplementary Record on Removal From Ponce District Court.*

(Filed Jan. 15, 1902.)

In the District Court of Ponce.

JUANA DASTAS DE GARROZI
*vs.*
17 TOMAS GARROZI Y PIETRI, DOMINGO PIAZZA Y PIETRI, and JUANA MARIA GONZALEZ.

Know all men by these presents, that we, Tomas Garrozi as principal and Martin Fernandez and Carlos Lopez de Tord residents of Ponce, Porto Rico, as sureties are held and firmly bound to Juana Dastas de Garrozi, plaintiff in the above entitled cause her successors and assigns in the sum of Three Hundred Dollars lawful money of the United States of America, for the payment of which, well and truly to be made we, and each of us bind ourselves and ea-h of us our heirs, executors, and administrators jointly and severally by these presents.

The conditions of the obligations are: such that, whereas the said Tomas Garrozi y Pietri has applied by petition to the District Court of Ponce for a removal of a certain cause therein pending, wherein Juana Dastas de Garrozi, is plaintiff and Tomas Garrozi y Pietri Domingo Piazza y Pietri and Juana Maria Gonzalez are defendants, to the U. S. District Court for Porto Rico, for further proceedings on the grounds in said petit-on set forth and that all the proceedings in the said Court at Ponce shall be stayed.

Now therefore, if your petitioner the said Tomas Garrozi y Pietri shall enter in said U. S. Court on or before the 1st day of the regular session a copy of the records of said suit and shall pay all costs that be awarded therein by said U. S. Court if said Court shall hold that said suit was wrongfully removed thereto, then this obligation shall be void, otherwise to remain in full force and effect.

(Sig.) TOMAS GARROZI,
(Sig.) MARTIN FERNANDEZ,
(Sig.) CARLOS LOPEZ DE TORD.

Signed subscribed and sworn before me this 11th day of Jan. 1902.

(Sig.) RICARDO NADAL,
*Clerk U. S. Dist. Court of Porto Rico,*

(Sig.) A. AGUAYO, *Deputy Clerk.*

(Copy.)

District Court of Ponce.

JUANA DASTAS DE GARROZI
*against*
THOMAS GARROZI Y PIETRI, DOMINGO PIAZZA Y PIETRI, and JUANA MARIA GONZALEZ.

18 The petition of Tomas Garrozi y Pietri one of the defendants in the above entitled action respectfully shows:

That said action is a suit of a civil nature of which the District Court of the United States for Porto Rico has original jurisdiction and has been brought and is now pending in this Honorable Court and has not yet *being* tried nor has the time for the defendants to appear plead or answer expired, and the matter in dispute exceeds exclusive of interest and costs the sum and value of ten thousand dollars. That said suit is a controversy between said Juana Dastas who is through her marriage of the nationality of her husband a citizen of France and between the defendants of whom you- petitioner is one and that your petitioner at the time of the commencement of *a* said suit has been and stil- continues to be a citizen of France.

That by reason of the premises this petitioner desires and is entitled to have said suit removed to the said United States District Court for Porto Rico. That the petitioner has not yet filed any defense and that he has not applied for any inhibitory proceedings.

Your petitioner herewith presents the bond provided by statute in such cases.

Your petitioner therefore prays that this Court proceeds no further therein, except to make the order of removal as required by law and direct a transcript of the record herein to be made for said U. S. Court.

(Sig.) CHAS. BOERMAN,
*Defendants' Att'y.*

Tomas Garrozi y Pietri on oath says: I am the petitioner in the above written petition and I have heard it read and that the same is true of my own knowledge except as to matters alleged on information and belief and as to such statement I believe it to be true.

(Sig.) TOMAS GARROZI.

Subscribed and sworn to before *be* this — day of January 1902.

UNITED STATES OF AMERICA, *District of Porto Rico, ss:*

Martin Fernandez and Carlos Lopez de Tord, the sureties named in the foregoing bond, on oath each for himself says as follows:

19 I am the same person whose name is subscribed to the foregoing bond and I state that I am a house holder and resident of the municipality of Ponce in the District aforesaid, and that I am worth the sum of three hundred dollars named therein as a penalty thereof over and above my just debts and liabilities exclusive of property which is exempt from execution.

(Sig.) MARTIN FERNANDEZ,
(Sig.) CARLOS LOPEZ DE TORD.

Subscribed and sworn to before me this 17th day of January 1902.

RICADO NADAL,
*Clerk U. S. District Court of Porto Rico.*
By A. AGUAYO,
*Deputy Clerk.*

I, the undersigned, substitute Secretary of the Ponce District Court the Secretary of said Court being ill, hereby certify that the foregoing instruments are true and correct copies taken by the official Interpreter of this Court form the original document- which were filed in said District Court of Ponce on the 7th instance by Charles M. Boerman, Defendant's Attorney, in testimony whereof, I set my hand and seal of the said District Court of Ponce, this 15th day of January 1902.

GUSTAVO RODRIGUEZ.

*Joint Answer and Plea.*

(Filed February 26th, 1902.)

In the United States District Court for Porto Rico.

JUANA DASTAS DE GARROZZI
*against*
TOMAS GARROZZI Y PIETRI, DOMINGO PIAZZA Y PIETRI, and JUANA MARIA GONZALEZ.

The joint and several answer of Tomas Garrozzi y Pietri, Domingo Piazza y Pietri, and Juana Maria Gonzalez to part and their joint and several plea to the residue of the original bill of complaint of Juana Dastas de Garrozzi.

These defendants saving and reserving to themselves all right of exceptions to the said bill of complaint on account of the many errors therein contained for answer thereto or to so much and such parts thereof as they are advised by counsel it is necessary or im-
20 portant for them to make answer to, answering say:

The derendants admit the allegations contained in para-

graph I of said bill, but defendant Garrozi alleges that the separation took place on account of the complainant's bad conduct.

The defendants admit the allegations of the second paragraph of said bill as far only as that Tomas Garrozi has been possessed of the there enumerated properties and credits but deny that as to the two houses that they were acquired after marriage between Garrozi and complainant and allege that all the enumerated properties and credits were acquired by Garrozi with money that he possessed either in cash before marriage, or in money acquired through sale of properties that have been his own before his marriage to complainant or acquired by realisation of credits due him before marriage to the complainant.

The defendants further answering admit the allegations contained in the paragraph- 3, 4 and 5 of the bill of complaint as far as that the said transfers and sales of properties have taken place but deny any fraud or intent to prejudice the rights of the complainant herein, in the transactions and allege that all the said transactions and sales have been for good and valuable consideration paid and received between the parties to those transactions. The defendants further answering admit the allegation of paragraph 7 that Tomas Garrozi is the attorney in fact and manager for the co-defendants Domingo Piazza and Juana Maria Gonzales, but deny all the other allegations of said paragraph and that Tomas Garrozi bought with the money received from the sale of their property, as alleged, drafts in his own name and that he deposited them or the proceeds thereof in his own name in Paris.

The defendants further answering deny that in any transaction between them there was any fraud or simulation whatever. They deny that the house in Yauco was reconstructed with the money of Tomas Garrozi and also that he in his own name and title had procured or tried to procure an execution against the heirs of Francisco Mejia.

The defendants allege that Tomas Garrozi is receiving a certain salary from them as their respective manager.

21 The defendants admit the allegations of paragraph 8 of the bill of complaint but defendant Tomas Garrozi alleges that it was all on account of bad conduct of the complainant and not by any fault of his.

The defendants admit the allegations of paragraph 9 of the bill of complaint but deny that any indebtedness for alimony to the complainant has occur-ed before the above mentioned (in the bill) transactions and transfers and sales of property between the co-defendants took place.

Defendant Tomas Garrozi and Juana Maria Gonzalez denied that there is any legal relationship between them as brother and sister.

Defendants deny that defendants Domingo Piazza is a poor man or that he came over here subsidized by Tomas Garrozi. He alleges that he always and before coming to Porto Rico was and is now a proprietor in Corsica.

Defendant Tomas Garrozi alleges that when he married the complain-t he was possessed of the two houses above mentioned and of

a certain coffee plantation named Juanita, that he realized by the sales that he made of this plantation all the money that he spent in buying the rest of the properties of which he became possessed during his marriage to the complainant. That the complainant was poor when married to him and did not bring any money or property into the marriage society, that in consequences of bad business he not only did not increase the property during said marriage but actually suffered great losses and is now reduced to the position of having an employ from the co-defendants. That with the quarter part of the money he received from the sale of his properties he had to pay off indebtedness that he incur-ed before either to the co-defendants or to others.

And for their plea to the said bill of complaint the defendants say that the said complainant at the time of the above stated sales and transactions had no claim for alimony or any other claim of indebtedness in her favor against the defendant Garrozi, and that the transaction did not prejudice any creditors of the said Tomas
22 Garrozi.

And for a further plea the defendants allege that the matrimonial community of the said Garrozi and the complainant has not dissolved by law and that she therefore has no claim whatever to any part thereof or any profits in case there should be or have been any.

And these defendants deny all and all manner of unlawful combination and confederacy -herewith they are by said bill charged without this that there is any other matter or cause or thing in said bill contained material and necessary to make answer to and not herein specifically denied avoided traveresed or well and sufficiently answered true to the knowledge or belief of these defendants, all which matters and things the defendants are ready and willing to aver maintain and prove as this Court shall direct, and they pray to be hence dismissed with their costs and charges in this behalf wrongfully sustained.

C. M. BOERMAN,
*Solicitor for Defendants.*

UNITED STATES OF AMERICA, *District of Porto Rico, ss:*

Tomas Garrozi; Juana Maria Gonzalez and Do-ingo Piazza y Pietri each of them being sworn for himself says as follows:

I am one of the above named defendants and am acquainted with the contents of the foregoing answer. So much of the answer as concerns my own acts and deeds is true to the best of my knowledge and so much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

TOMAS GARROZI.
DOMINGO PIAZZA.
JUANA MA GONZALEZ.

At her request,

TOMAS GARROZI.

Sworn to before me this 20th day of January A. D. 1902.

A. AGUAYO, *D. C.*

*Agreement of Counsel.*

(Filed March 15th, 1902.)

District Court of the United States.

D. GARROZI
*vs.*
T. GARROZI ET AL.

It is admitted by both parties that the petition for removal omitted to state that the defendant was a non-resident of Porto Rico and also it is admitted that the plaintiff appeared and procured a rule permitting him to replead within a given time.

23

F. H. DEXTER,
*Solicitor for Complainant.*
C. M. BOERMAN,
*Solicitor for Defendants.*

*Motion to Amend Petition for Removal.*

(Filed March 15th, 1902.)

U. S. District Court for Porto Rico.

DASTAS DE GARROZI
*vs.*
TOMAS GARROZI ET AL.

The defendant prays that the petition for removal may be amended and offers the following amendment:

After the words "a citizen" and before the words "of France" put the words "and resident"

C. M. BOERMAN,
*Attorney for Defendants.*

*Opinion.*

(Filed March 15th, 1902.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS GARROZZI, Plaintiff,
*vs.*
TOMAS GARROZI ET AL., Defendants.

Opinion.

This cause is in this Court by an order of removal made by the Insular District Court. The record in that Court *in that Court* is

here. After the removal the complainant appeared in this Court and procured an order permitting her to re-plead within a given time. This would not, however, cure lack of jurisdiction in this Court, if it existed.

The complainant now moves to remand the case because the petition for removal does not aver that the defendant is a non-resident.

This is a necessary jurisdictional averment for removal. The defendant moves to amend his petition for removal by averring his non-residence and to this the complainant objects.

It is a rule in such a case that a mere defective averment may be made sufficient by amendment in this Court. But if there be a want of material and jurisdictional averment, it can not be sup-
24 plied by an amendment. An amendment cannot be allowed showing the cause might have been removed. In such a case the jurisdiction does not pass or attach to this Court, although the State or Insular Court may in fact order the transfer.

121 U. S., 427, Carson *vs.* Dunham
131 U. S., 242, Crehore *vs.* R. R. Co.

In this case, however, the petition for removal avers that the defendant is a citizen of France. In other words, an alien. Non-residence once shown is presumed to continue. The averment of French citizenship implies that the defendant, at least at one time , resided there. A resident of the United States is presumed to be citizen of the United States, and a citizen of France should be presumed to be a resident of that country. The proposed amendment is not, therefore, to supply a necessary averment, but to perfect one defectively made. At least it should be considered by legal implication or intentment, from the fact stated, as defectively made.

An order will therefore be entered overruling the motion to remand and allowing the amendment to be filed.

W. H. HOLT, *Judge.*

*Order Overruling Motion to Remand and Allowing Amendment to the Petition of Removal.*

(March 15th, 1902.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS GARROZZI, Plaintiff,
*vs.*
TOMAS GARROZZI ET AL., Defendants.

Order.

A stipulation is filed herein and the parties have been heard

The Court now files an opinion herein, and the motion to remand this cause is now overruled, and the amendment to the petition for removal is allowed, and is ordered to be filed.

WM. H. HOLT, *Judge.*

*Stipulation as to Time to Plead.*

(Filed March 17th, 1902.)

In the District Court of the United States for Porto Rico Sitting at Ponce, in Equity.

JUANA DASTAS DE GARROZI
*vs.*
TOMAS GARROZI ET AL.

Stipulation as to Time to Plead.

It is agreed between the parties hereto that complainant shall have until the April Rule day within which to file her bill of complaint herein and to replead, and it is understood that this cause will be docketed on the Equity side of this Court.

C. M. BOERMAN,
*Solicitor for Defendants.*
F. H. DEXTER,
*Solicitor for Complainant.*

*Additional Record From the District Court of Ponce, P. R.*

(Filed April 29th, 1902.)

District Court of Ponce April 22, 1902.

To the Hon. Presiding Judge of the U. S. Dist. Court for Porto Rico.

SIR: I have the honor to forward to you herewith copies of the writings and bond presented by Att'y Boerman in the proceedings instituted by Doña Juana Dastas against Don Tomas Garrozi, Da Juana Maria Gonzalez and Domingo Piazza y Pietri, about nullity of contracts in as much as this Court has decided to send them to your Court, because it has inhibited itself from taking any cognizance of said suit in favor of the Court precided over by your Honor.

Respectfully,

ISADORE SOTO NUSSA,
*Presiding Judge.*

[Seal of the Ponce District Court.]

In the Ponce District Court.

JUANA DASTAS DE GARROZI
*against*
TOMAS GARROZI Y PIETRI, DOMINGO PIAZZA Y PIETRI, and JUANA MARIA GONZALEZ.

The petition of Juana Maria Gonzalez one of the defendants in the above entitled action respectfully says:

That said action is a suit of a civil nature of which the
26 United States District Court for Porto Rico as original jurisdiction, to wit; for the annulment of deeds for an amount over thousand dollars besides interest and costs and has been brought in this Court and has not yet been tried, nor has the time for the defendants to appear demur plead or answer expired. That said suit contains controversys which are wholly between the Complainant a citizen of France and your petitioner who is a citizen of Porto Rico and which can be fully determine- between them as your petitioner is informed and believes that the citizenship of the parties is now as has been at the commencement of this suit as has been stated. That by reason of the premises your petitioner is desirous and entitled to have said suit removed to the United States District Court for Porto Rico. That your petitioner has not yet filed any defence in this Court, nor has she applied for any inhibitory proceeding. Your petitioner therefore presenting the bond required in such cases prays that this Court make an order of removal of this case to the said United States District Court for Porto Rico and direct a transcript of the record as well as of this petition to be transmitted to this Court.

C. M. BOERMAN,
*Solicitor for Defendant.*

U. S. OF AMERICA, *District of Porto Rico, ss:*

Juana Maria Gonzalez on oath says: I am the above named petitioner and have heard and read the petition and know the contents thereof and that it is true to my knowledge except as to matters alleged on information and belief and as to such I believe it to be true.

A RUEGO DE JUANA MARIA GONZALEZ.
TOMAS GARROZI.

Sworn to before me this 12th day of March 1902.
(Sig.) RICARDO NADAL,
*Clerk U. S. District Court,*
By A. AGUAYO, *D. C.*

[SEAL.]

In the District Court of Ponce.

JUANA DASTAS DE GARROZI
*against*
27 TOMAS GARROZI Y PIETRI, DOMINGO PIAZZA Y PIETRI, and JUANA MARIA GONZALES.

The petition of Domingo Piazza y Pietri one of the defendants in the above entitled action respectfully shows:

That said action is a suit of a civil nature of which the District Court of the United States for Porto Rico has original jurisdiction to wit, for annulment of deeds of over thousand dollars and has been

brought in this Honorable Court and has not yet been tried, nor has the time for the defendants to appear, plead, demur or answer expired. That said suit is a controversy between the plaintiff, a French citizen and the defendants of whom the petitioner is a citizen of France and a resident of Corsica, France, and has been such at the commencement of the suit as well as now. That by the reason of the premises this petitioner is desirous and entitled to have said suit removed to the said United States District Court for the District of Porto Rico. That your petitioner has not yet filed any defence in this Court, nor has he applied for any inhibitory proceeding. Your petitioner herewith presents the bond provided by Statute in such cases. Wherefore he prays that this Court make an order in the case of removal to the U. S. District Court for Porto Rico and direct a transcript of the record and of this petition to be made to said Court.

C. M. BOERMAN,
*Solicitor for Defendant.*

U. S. OF AMERICA, *District of Porto Rico, ss:*

Domingo Piazza y Pietri on oath says: I am the above named petitioner. I have heard it read and know the contents thereof and that the same is true in substance and fact.

(Sig.) DOMINGO PIAZZA.

Sworn to before me this 12 day of March, 1902.

(Sig.) A. AGUAYO,
*D. C. U. S. District Court.* [SEAL.]

JUANA DASTAS DE GARROZI,
*against*
TOMAS GARROZI Y PIETRI, DOMINGO Y PIETRI, and JUANA MARIA GONZALEZ.

28 Know all men by these presents: That we, Domingo Piazza y Pietri and Juana Maria Gonzalez, as principals and Xavier Mariani and Martin Fernandez residents of Ponce as sureties are held and firmly bound to Juana Dastas de Garrozi, plaintiff above named in the sum of Three Hundred Dollars lawful money of the United States of America, for the payment of which well and truly to be made we and each of us bind ourselves, our heirs administrators and executors jointly and severally by these presents.

The condition of this obligation is such that whereas the said Domingo Piazzi y Pietri and Juana Maria Gonzalez, have applied by petition to the District Court of Ponce for the removal of a certain cause therein pending wherein Juana Dastas de Garrozi de Garrozi is plaintiff and Tomas Garrozi, Domingo Piazza and Juana Maria Gonzalez are defendants to the United States District Court for Porto Rico, on the grounds in the petitions set forth.

Now, therefore, if your petitioners shall enter in the said U. S. District Court on or before the 1st day of the first regular session a copy

of the record of said suit and shall pay all costs that may be awarded therein by said U. S. Court if said Court shall hold that said suit was wrongfully removed thereto, then this obligation to be void, otherwise to remain in full force and effect.

(Sig) A RUEGO DE JUANA MARIA GONZALEZ.
TOMAS GARROZI.
MARTIN FERNANDEZ.
EXAVIER MARIANI.
DOMINGO PIETRI.

Signed before me, this 12th day of March 1902.

RICARDO NADAL,
*Clerk U. S. District Court.*
By A. AGUAYO, *D. C.*

U. S. OF AMERICA, *District of Porto Rico, ss:*

Exavier Mariani and Martin Fernandez each of them being sworn says they are worth each of them for himself over six hundred dollars over and above their legal liablities, and that they are house holders.

MARTIN FERNANDEZ.
X. MARIANI.

Sworn to before me this 12th of Mch 1902.

A. AGUAYO,
*D. C. U. S. Court.*

## Reformed Bill of Complaint.

(Filed April 7, 1902.)

In the District Court of the United States for Porto Rico.

29 JUANA DASTAS, a Citizen of the Republic of France, Plaintiff,
*vs.*
TOMAS GARROZI Y PIETRI, MRS. JUANA MARIA GONZALEZ, DOMINGO PIAZZI Y PIETRI, and QUINTIN G. RAMIREZ Y RAMIREZ,
Citizens of the Republic of France, Defendants.

To the Honorable Judge of the District Court of the United States in and for the District of Porto Rico:

Juana Dastas, a citizen of the Republic of France, brings this bill against Tomas Garrozi y Pietri, Juan Maria Gonzalez, Domingo Piaza y Pietri, and Quintin G. Ramirez, citizens of the Republic of France, and residing in the Municipality of Yauco, Porto Rico, and thereupon your orator complains and says that she contracted matrimony in the Municipality of Yauco, Porto Rico, on the twelfth day of May, A. D. 1886, with the said defendant Tomas Garrozi y Pietri, and that the said contract of matrimony was made without any ante-nuptial agreement as to the dower, conjugal or community property that they then had or might accumulate, and that your

orator lived with and sustained the marriage relation with the said defendant Tomas Garrozi y Pietri until the twenty eighth day of November, A. D., 1898, when they separated.

Your orator further represents unto your honor that on the twenty eighth day of November, A. D., 1898, and at the time of the said separation that your orator and the said defendant, Tomas Garrozi y Pietri, were owners and possessed of the following community property, to wit:

(*a.*) Two masonry houses located in Borinquen Street of the Municipality of Yauco, and being recorded in the municipal register under the respective numbers of 40 and 42.

(*b.*) A sugar cane plantation known and designated as "Maria Antonia," located in the barrios of Guanica and Susua Baja, in the municipality of Yauco, the same being improved with houses, with steam engines and the necessary machinery for manufacturing sugar.

(*c.*) A mortgage credit on the coffee plantation known and designated as "Luisa" and located in the barrio of Rancheras, in the Municipality of Yauco, for the sum of twenty thousand pesos, which the said defendant, Tomas Garrozi y Pietri, purchased from Marcial Santoni y Ortiz, the said plantation now being owned by Tomas Olivari Santo and his mother Mrs. Adela.

(*d.*) A mortgage credit on the coffee plantation known and designated as "Leonor" for the sum of twenty-three thousand six hundred and eighty pesos, the same being situated in the barrio of Aguas Blancas in the Municipality of Yauco, now being owned by Francisco Mejiasy Rodriguez.

(*e.*) A mortgage credit for the sum of twelve thousand pesos upon the coffee plantation named "Juanita" in the barrio of Aguas Blancas in the Municipality of Yauco, the said coffee plantation being the property of Mr. Ysidoro Pintado.

(*f.*) A mortgage credit for the sum of ten thousand four hundred and seventy pesos and thirty six centavos upon the coffee plantation named "Mercedes," which is composed of three parts or parcels of lands, two of said parts or parcels of land being located in the barrio of Pasto, Municipality of Guayanilla, and the other part or parcel of land being located in the barrio of Aguas Blancas, Municipality of Yauco, said plantation being the property of Mr. Mercedes Lluvera.

Your orator further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, filed suit against your orator in the honorable District Court of Porto Rico for the District of Ponce, and in which judgment was rendered on the seventeenth day of February, A. D., 1900, denying the divorce and declaring your orator not guilty.

Your orator further represents unto your honor that on the twenty first day of May, A. D., 1900, in the Honorable District Court of Porto Rico for the District of Ponce, that the said defendant, Mr. Tomas Garrozi y Pietri, brought another suit for divorce against your orator, which was decided in your orator's favor, and which is now

pending and undecided on appeal in the Supreme Court of
31 Porto Rico.

Your orator further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, as administrator of the aforesaid community property, fraudulently conveyed, transferred and sold, by a public notarial deed, on the twenty-sixth day of December, A. D., 1899, and before José R. Nazario de Figueroa, a notary public in San German, Porto Rico, for the simulated and pretended consideration of six thousand pesos, the aforesaid masonry houses in subdivision "a" to the defendant Juana Maria Gonzalez his natural si-ter.

Your orator further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, as administrator of the aforesaid community property, fraudulently conveyed, transferred and sold by public notarial deed on the twenty fifth day of May, A. D., 1900, and before Manuel Solis, a notary public in Yauco, Porto Rico, for the simulated and pretended consideration of forty-eight thousand dollars, the said sugar plantation "Maria Antonia," in subdivision "b" with appurtenances thereto to the defendant Juana Maria Gonzalez, his natural sister.

Your orator further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, as administrator of the aforesaid community property, fraudulently conveyed, transferred, cessioned and assigned by public notarial document, on the first and fourth day of August, A. D., 1900, and before Manuel Solis, A notary public in Yauco, Porto Rico, for the simulated and pretended sum of twenty thousand pesos, the aforesaid mortgage on the coffee planta- "Luisa" in sub-division "c" to the defendant Domingo Piaza y Pietri his uncle.

Your orator furtner represents unto your honor that the said defendant, Tomas Garroz: y Pietri, as administrator of the aforesaid community property fraudulently conveyed, transferred, cessioned and assigned by public notarial document and before Manuel Solis,
a notary public in Yauco, Porto Rico, on the second day of
32 August, A. D., 1900, for the simulated and pretended sum of twenty-three thousand six hundred and eighty pesos, the aforesaid mortgage on the coffee plzntation "Leonor" in sub-division "d" to the defendant Domingo Piaza y Pietri his uncle.

Your orator further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, as administrator of the aforesaid community property, fraudulently conveyed, transferred, cessioned and assigned by public notarial document on the first day of August, A. D., 1900, and before Manuel Solis, a notary public in Yauco, Porto Rico, for the simulated and pretended sum of twelve thousand pesos, the aforesaid mortgage in the coffee plantation "Juanita" in sub-division "e," to the defendant Domingo Piaza y Pietri His uncle.

Your orator further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, as administrator of the aforesaid community property, fraudulently conveyed, transferred, cessioned and assigned, by public notarial document, and before Rafael Leon y Paz, on the thirty first day of July, A. D., 1900, in Ponce, Porto

Rico, for the simulated and pretended sum of ten thousand four hundred and seventy pesos and thirty six centavos, the aforesaid mortgage on the coffee plantation "Mercedes," in sub-division "f," to the defendant Domingo Piaza y Pietri his uncle.

Your orator further represents unto your Honor that the said defendant, Tomas Garrozi y Pietri, has general power of attorney of the said defendant Juana Maria Gonzalez, his natural sister, and in the name of the said defendant Juana Maria Gonzalez, on the second day of July, A. D., 1900, fraudulently conveyed, transferred and sold by public deed before Angel Acosta, a notary public in Ponce, Porto Rico, the aforesaid sugar plantation "Maria Antonia" for the simulated and pretended sum of forty eight thousand dollars, in subdivision "b" of this bill of complaint to the defendant Quintin G. Ramirez y Ramirez.

Your orator further represents unto your honor that in the divorce proceedings now pending on appeal in the Supreme Court
33 of Porto Rico, the same having been appealed from the honorable District Court of Porto Rico for the District of Ponce, that the said honorable District Court made a judicial decree on the fifteenth day of July, A. D., 1901, granting unto your orator the sum of seventy five dollars per month and payable monthly in the form of alimony pending final adjudication of the said suit, and that the said Court by their further order on the seventh day of August, A. D., 1900, ordered the said defendant Tomas Garrozi y Pietri to pay unto your orator the sum of five hundred and ninety eight pesos judicial expenses which your orator had incurred in defen-ing said suit. And your orator further represents that she has been unable to collect either of said sums or any part thereof by reason of the said fraudulent transfers of the aforesaid properties.

Your orator further represents unto your honor that each and all the aforesaid sales, transfers, and assignments were fraudulent and void and at the time of making the aforesaid deeds, cessions and assignment of all the aforesaid properties and mortgages that the defendant Tomas Garrozi y Pietri and each and all of the said grantees and cessionees thereof well knew that one-half of the aforesaid properties and mortgages were community property and one-half belonged to your orator and that they were so then and there conveyed in fraud of your orator, and that the said defendant Tomas Garrozi y Pietri had no means apart from the aforesaid property and mortgages to settle with your orator for her interest in the aforesaid properties and mortgages and to pay your orator her stipulated monthly allowance in form of alimony of seventy five dollars per month, and the sum of five hundred and ninety eight pesos as allowed and decreed to your orator for the judicial expenses by the District Court of Ponce; that the afore- sales, transfers, cessions and assignment by notarial documents were fraudulent-made, not *bona fide,* and for a mere simulated and pretended consideration, and were made for the express purpose of depriving your
34 orator of her rightful and legal interest in the aforesaid properties and mortgages, and to avoid paying the aforesaid

monthly allowance and court expenses as adjudged and decreed by the honorable District Court for the District of Ponce to your orator.

To the end therefore that your orator may have that relief which she can only obtain in a Court of Equity, and that the said defendants and each of them may answer the premises, but not upon oath or affirmation, the benefit of which is expressly waived by your orator, and she now prays the honorable court that the said sales, transfers, cessions and assignment of the aforesaid properties and mortgages be set aside, annul-ed and held for naught and that the defendants be required to surrender up the same to be cancelled, and that they and each of them be for ever restrained and enjoined from setting up or claiming any estate, right, title interest in or to the said properties and mortgages, and that your orator may be decreed to be owner of ½ the aforesaid properties and mortgages and have such further or other relief as the nature of the circumstances of the case may require.

May it please your honor to grant unto your orator the right of subpœna to be directed to said Quintin G. Ramirez y Ramirez, who heretofore has not been served, thereby commanding him at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable Court, and then and there full, true, direct and perfect answer make to all and singular the premises, and to stand, perform and abide by such order, direction and decree as may be made against him in the premises as shall seem meet and agreeable to equity, and your orator will ever pray.

FRANCIS H. DEXTER,
HORTON AND CORNWELL,
*Solicitors for Complainant.*

*Writ of Subpœna.*

(Issued April 30th, 1902.)

In the District Court of the United States for Porto Rico. In Chancery.

35 JUANA DASTAS
*vs.*
TOMAS GARROZI Y PIETRI, MRS. JUANA MARIA GONZALEZ, DOMINGO PIAZA Y PIETRI and QUINTIN G. RAMIREZ.

*Subpœna.*

UNITED STATES OF AMERICA,
*District of Porto Rico, ss:*

The President of the United States of America to Quintin G. Ramirez y Ramirez, Greeting:

You are hereby commanded that you be and appear in the said District Court of the United States for Porto Rico, aforesaid at the court room of said court in the city of Ponce on the first Monday in

June 1902, the same being the 2nd day of that month then and there to answer a certain bill in Chancery exhibited against you in said Court by Juana Dartas and to have and receive what the said Court shall have considered in tha- behalf, and this you are not to omit under penalty of five thousand doliars (5,000.00).

Witness, the Honorable Wm. H. Holt, Judge of the District Court of the United States for Porto Rico, This 30th day of April A. D., 1902 and in the 126th year of the Independence of the United States of America.

Attest:

RICARDO NADAL, *Clerk,*
By A. AGUAYO, *Deputy.*

***Memorandum.***

You are hereby commanded to enter your appearance in the above entitled suit on or before the first Monday in June next, the same being the 2nd day of June 1902, at the Clerk's office of said Court, pursuant to said bill; otherwise the said bill may be taken *pro confesso.*

***Marshal's Return.***

**(Filed May 12th, 1902.)**

**United States Marshal's Office, District of Porto Rico.**

I hereby certify and return, that I received the within writ
36 on the 9th day of May, 1902, and personally served the same on the 10th day of May, 1902, on Quintin G. Ramirez y Ramirez by delivering to and leaving with Alfredo Ramirez an adult person, who is a member or resident in the family of Quintin G. Ramirez y Ramirez said defendant named therein at San German, P. R. in said District an attested copy thereof, at the dwelling house or usual place of abode of said Quintin G. Ramirez y Ramirez one of said defendants herein.

E. S. WILSON, *U. S. Marshal,*
By WILHEM LUTZ, *Deputy.*

Mayaguez, P. R. May 10th, 1902.

*Demurrer to Bill.*

(Filed April 30th, 1902.)

In the United States District Court for Porto Rico. In Chancery.

JUAN DASTAS GARROSSI
*vs.*
TOMAS GARROSSI ET AL.

The joint demurrer of the defendants to the repleaded original bill of complaint of the complainant.

These defendants by protestation not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, demur thereto and for cause of demurrer show: That the said plaintiff who appears by her said bil- to be a *feme couvert* has exhibited her said bill without any person being named therein as her next friend.

Wherefore they demur thereto and pray judgment whether they shall be compelled to make any further answer to said bill and pray to be hence dismissed.

C. M. BOERMAN,
*Defendants' Solicitor.*

U. S. OF AMERICA,
*District of Porto Rico, ss:*

Tomas Garrossi, Juana Maria Gonzalez and Domingo Piazza on oath say that the said demurrer is not interposed for delay and that the same is true in point of fact.

DOMINGO PIAZZA,
TOMAS GARROSSI,
Por JUANA MARIA GONZALEZ.
A su Ruego TOMAS GARROSSI.

Sworn to before me this 30th day of April, 1902

A. AGUAYO,
*Deputy Clerk.*

37 I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

C. M. BOERMAN,
*Defendants' Solicitor.*

*Joint Answer and Plea.*

(Filed May 12th, 1902.)

In the United States District Court of Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROSSI ET AL.

The joint and several answer of Tomas Garrossi y Pietri, Domingo Piazza y Pietri and Juana Maria Gonzalez to part and the joint and several plea of the same defendants to the residue of the original repleaded bill of complaint of Juana Dastas de Garrossi, complainant.

These defendants saving and reserving to themselves all right of exceptions and pleas to the said bill of complaint on account of the many errors therein contained, for answer thereto or to *to* so much thereof as they are advised by counsel it is necessary or important for them to make answer to answering say: They admit the allegation of the marriage of the complainant to the defendant Tomas Garrossi and the allegation that they separated, but deny that the separation was the consequence of any fault on the side of said Tomas Garrossi.

They admit that there are now pending proceedings for divorce against the complainant by said Tomas Garrossi, in the Supreme Court of Porto Rico and that the complainant and defendant Garrossi are legally still man and wife with all their conjugal rights. They deny that the complainant was at any time possessed of any of the property enumerated in the bill of complaint and allege that all the property therein enumerated and specified was the sole property of the defendant Tomas Garrossi possessed and owned by him alone as his own separated property, owned by him: one part of said property before his marriage to the complainant and the other part
38 bought with money possessed by him before his marriage or with money realized by the sale of real and personal property owned by him before his marriage to the complainant. They further allege that the complainant did not bring in any marriage portion and did not possess in her own right any property or contribute any to the marriage society. They further allege, defendant Garrossi on his own knowledge and the other defendants on information and belief, that there were no gains or profits which belonged to the marriag couple or marriage society as social or common gains at any time and specially at the time of the sales of property alleged in the bill of complaint, which would have entitled the complainant to a participation in the ownership of any part of said property.

The defendants admit that the transfers of the property enumerated and specified in the bill of complaint took place, but deny any part ownership in said properties by the complainant and further deny any fraud, simulation or intent to prejudice any rights of the com-

plainant or any body else's rights connected with said transfers or sales, and allege that all the said sales and transfers of properties or property rights have been made in good faith and for good and valuable considerations and that the defendant Garossi had full right to sell and they to purchase any property belonging exclusively to him, and that they have lawfully acquired said properties and respectively lawfully disposed of them without prejudicing any person by those acts.

The defendants deny that prior to the divorce proceedings now pending on appeal in the Supreme Court the defendant Tomás Garossi had instituted any other divorce proceedings against the complaina-t, and also deny that on the 7th day of August 1900 an order to pay to her the Complainant $598.00 has been made, but allege that such order — dated about one year thereafter.

And the said defendants Tomas Garossi and Juana Maria Gonzalez upon their own knowledge and defendant Domingo
39 Piazza upon information and belief deny that there is any legal relationship between defendant Garrossi and Juana Maria Gonzalez, and take exception to said allegation as scandalous.

And the defendants further allege that all the sales and transfers of property referred to in the bill of complaint have occurred long before any liability has been incurred by the defendant Tomas Garrossi on the alleged orders for alimony, suit money or costs, and that all said orders have been made long after the sales referred to have been made for valuable and good consideration and without any intent to defraud.

And the said defendants for their plea to all the relief sought by the said bill say that at the time of the commencement of this suit and until now the complainant and the defendant Tomas Garrossi have been and still are legally man and wife and that during coverture and until the marriage relationship has been dissolved by a decree of a competent Court the complainant has no right to any part of the common gains of the marriage society even should there have been any, which the defendants deny, and that therefore the defendant has no cause of action which would entitle her to any equitable relief in this Court.

All which matters and things the defendants aver to be true and plead in bar to the whole of said bill and they pray to be hence dismissed with their costs.

C. M. BOERMAN,
*Solicitor for the Defendants.*

U. S. OF AMERICA, *District of Porto Rico, ss:*

Tomas Garrossi Juana Maria Gonzalez and Domingo Piazza each of them being under oath says that all the allegations in the foregoing plea and answer are true to his own knowledge except as to matters stated to be alleged upon information and belief and as to such matters he believes them to be true.

TOMAS GARROSSI,
Por JUANA MARIA GONZALEZ,
A su Ruego TOMAS GARROSSI,
DOMINGO PIAZZA.

Sworn to before me this 30th day of April, 1902.

A. AGUAYO,
*Deputy Clerk.*

40 (This certificate was filed May 16th as of May 12" 1902.)

(I hereby certify that in my opinion the foregoing plea is well founded in point of law.

C. M. BOERMAN,
*Solicitor for the Defendants and of Counsel.*)

*Answer, Plea, and Demurrer of Quintin Ramirez.*

(Filed May 14th, 1902.)

In the United States District Court for Porto Rico. In Chancery.

JUANA DASTAS GARROSS.
*against*
TOMAS GARROSSI ET AL.

The Separate Demurrer, Plea and Answer of Quintin G. Ramirez y Ramirez to the Repleaded Original Bill of Complaint of the Complainant.

First: The defendant Ramirez demurs to said bill of complaint for that the said plaintiff who appears by her said bill to be a married woman has exhibited her said bill without any person being named therein as her next friend.

Second: The defendant Ramirez not confessing or acknowledging any of the matters or things alleged in the bill to be true in such manner and form as therein set forth, and not waiving his demurrer aforesaid for his plea to said bill says that the complainant being still the legal spouse of the defendant Garrossi has no rights to the property described in the bill or to any gains or profits of the matrimonial community until a divorce has been decreed in her favor and therefore has no right of action against the defendant.

Third: And for his answer to so much of the said bill as he is advised by his counsel it is material or necessary for him to answer, not waiving his aforesaid demurrer and plea, answering says as follows: He denies he was a party to any fraud in any of the transactions, transfers or sales alleged in the complaint. He alleges that the property referred to in the said complaint as the sugar estate Maria Antonia was inherited by him from his deceased father Gustavo Ramirez.

That said estate was mortgaged in the form of a deed of a conditional sale with the right of repurchase, and that at the time of the transaction referred to in the bill of complaint he, said de-
41 fendant Ramirez wishing to free his said property from the said incumbrance has paid to the co-defendant Juana Maria Gonzalez, who at the time was the owner of the said deed of condi-

tional sale above referred to, the money then due to her to wit: the sum of forty eight thousand dollars, a very good and valuable consideration, for which she, the said Juana Maria Gonzalez then reconveyed the said property in absolute ownership and without incumbrance to the said defendant Quintin Ramirez.

That all these transactions were in good faith and for very valuable consideration and without any fraud and simulation whatsoever, all of which your respondent is ready to prove in the manner this Court shall deem fit.

C. M. BOERMAN,
*Solicitor for the Defendant.*

U. S. OF AMERICA, *District of Porto Rico, ss:*

Quintin Ramirez under oath says that the foregoing is true i- substance and fact.

QUINTIN RAMIREZ.

Sworn to before me this 30th day of April 1902.

A. AGZAYO,
*D. C. U. S. Court.*

(This certificate was filed May 16 as of May 14" 1902.)

(I hereby certify that the foregoing plea in my opinion is well founded in point of law.

C. M. BOERMAN,
*Solicitor for the Defendants and of Counsel.*)

*Motion for Leave to Amend.*

(Filed May 14, 1902.)

District Court of the United States for the District of Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZZI ET AL.

Motion for Leave to Amend.

Now comes Juana Dastas by her attorneys F. H. Dexter and Horton and Cornwell and move to amend bill of complaint of Juana Dastas by inserting where ever necessary "Juana Dastas by her next friend Luis Dastas."

F. H. DEXTER,
HORTON AND CORNWELL,
*Att'ys for Complainant.*

42 *Amendments to Bill of Complaint.*

(Filed May 14, 1902.)

District Court of the United States for the District of Porto Rico.
In Equity.

JUANA DASTAS, Plaintiff,
*vs.*
TOMAS GARROZZI ET AL., Defendants.

Now comes Juana Dastas by her Solicitors F. H. Dexter and Horton and Cornwell permission of the Court having been first obtained and amends the bill of complaint as follows:

In line one of the title after the name of Juana Dastas insert "By her next friend Luis Dastas."

In line one of paragraph one of the bill of complaint after the name Juana Dastas insert "By her next friend Luis Dastas."

F. H. DEXTER,
HORTON AND CORNWELL,
*Solicitors for Complainant.*

*Motion to Strike Out Pleas.*

(Filed June 13, 1902.)

District Court of the United States in and for the District of Porto Rico.

JUANA DASTAS ET AL.
*vs.*
TOMAS GARROSI ET AL.

Motion to Strike Out Plea.

Now comes the complainant and moves the Court to strike out pleas of Tomas Garrosi, Domingo Piazzi and Juana Maria Gonzalez for the reason that the same go to the whole of the said bill, is covered by the said answer which goes to the whole of the said bill, and the same is contrary to the rules of pleading.

F. H. DEXTER,
HORTON AND CORNWELL,
*Solicitors for Complainant.*

*Entry.*

(January 13, 1903.)

JUANA DASTAS GARROZZI
*vs.*
TOMAS GARROZZI Y PIETRI ET AL.

Submitted on pleas.

43 *Motion to Strike Out Plea and Demurrer of Quintin G. Ramirez.*

(Filed March 1, 1904.)

In the District Court of the United States in and for the District of Porto Rico.

JUANA DASTAS, Plaintiff,
*vs.*
TOMAS GARROZI Y PIETRI, Mrs. JUANA MARIA GONZALEZ, DOMINGO PIAZA Y PIETRI, and QUINTIN G. RAMIREZ Y RAMIREZ, Defendants.

To the Honorable Judge of the District Court of the United States for the District of Porto Rico:

Now come the plaintiff above named and moves this Court to strike out the separate demurrer and plea of Quintin G. Ramirez to the bill of complaint because the same are not founded upon a certificate of counsel that in his opinion they are well founded in point of law and because the demurrer is not supported by the affidavit of the defendant that it is not interposed for delay.

F. H. DEXTER,
*Solicitor for Plaintiff.*

*Motion to Strike Out Plea of Domingo Piaza, Garrozi and J. M. Gonzalez.*

(Filed March 1, 1904.)

In the District Court of the United States in and for the District of Porto Rico. In Equity.

Motion to strike out the joint and several plea of Tomas Garrozi y Pietri, Domingo Piaza y Pietri, and Juana Maria Gonzalez, to part of the bill of complaint.

JUANA DASTAS, Plaintiff,

*vs.*

TOMAS GARROZI Y PIETRI, MRS. JUANA MARIA GONZALEZ, DOMINGO PIAZA Y PIETRI, and QUINTIN G. RAMIREZ Y RAMIREZ, Defendants.

To the Honorable Judge of the District Court of the United States for the District of Porto Rico:

44 Now comes the plaintiff above named and moves this Court to strike out the joint and several plea of Tomas Garrozi y Pietri, Domingo Piaza y Pietri and Juana Maria Gonzalez, to part of the bill of complaint, because the same is not based upon a certificate of counsel that in his opinion it is well founded in point of law, and further because it is not supported by the affidavit of the defendants herein mentioned that it is not interposed for delay.

F. H. DEXTER,
*Solicitor for Plaintiff.*

*Motion for Leave to Amend Bill of Complaint.*

(Filed March 1, 1904.) (March 1st, 1904.)

In the District Couft of the United States in and for the District *District* of Porto Rico. In Equity.

JUANA DASTAS, Plaintiff,

*vs.*

TOMAS GARROZI Y PIETRI, MRS. JUANA MARIA GONZALEZ, DOMINGO PIAZA Y PIETRI, and QUINTIN RAMIREZ Y RAMIREZ, Defendants.

Motion for Leave to Amend Reformed Bill of Complaint.

To the Honorable Judge of the above Court:

Now comes the plaintiff above named and moves this Court for leave to amend her reformed bill of complaint as follows:

By inserting on the last page after the words "for the District of Ponce to your orator" and immediately preceding the prayer the fol-

lowing paragraph: That since the filing of her reformed bill of complaint and in the month of June, 1902 the Supreme Court of Porto Rico has granted an absolute divorce from the bonds of matrimony existing between Juana Dastas and Tomas Garrozi.

By adding and inserting in the prayer and after the Words "of properties and mortgages and" the following: That an account be taken of all the foregoing properties and assets and all other property in which complainant may have an interest; that a master be appointed to take such accounting and ascertain all the property belonging to the conjugal society and the value thereof, and the parts or portions thereof which correspond to your orator, and upon the filing of this report this Court shall decree a partition and division thereof in the proportion of one half to your orator and shall declare by its decree the right of your orator as aforesaid in and to the same.

F. H. DEXTER,
*Solicitor for Plaintiff.*

*General Replication to the Separate Answer of Quintin G. Ramirez y Ramirez.*

(Tendered March 2, 1904.)

In the District Court of the United States for Porto Rico, Sitting at Ponce. In Equity.

JUANA DASTAS
*versus*
TOMAS GARROZI ET AL.

This replicant, Quintin G. Ramirez y Ramirez, saving and reserving to himself all and all manner of advantages, of exceptions which may be had and taken to the manyfold errors, uncertainties and insufficiencies of the joint and several answer of the defendants above mentioned, for replication thereunto saith that he doth and will aver, maintain and propve his said bill to be true, certain, and sufficient in the law to be answered into by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied into, and not herein and hereby well and sufficiently replied into, confessed or avoided, traversed or denied, is true; all of which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct and humbly prays as in and by his said bill he hath already prayed.

F. H. DEXTER AND
JOSÉ HERNANDEZ.
*Solicitors for Complainant.*

*General Replication to the Joint and Several Answer of Tomas Garrozi y Pietri, Domingo Piaza y Pietri and Juana Maria Gonzalez.*

(Tendered March 2, 1904.)

In the District Court of the United States for Porto Rico,
46 Sitting at Ponce. In Equity.

JUANA DASTAS
*versus*
TOMAS GARROSI ET AL.

This replicant, Juana Dastas, saving and reserving to herself all and all manner of advantages, of exceptions which may be had and taken to the manyfold errors, uncertainties and insufficiencies of the joint and several answer of the defendants above mentioned, for replication thereunto saith that she doth and will aver, maintain and prove her said bill to be true, certain and sufficient in the law to be answer- *into* by the said defendants, and that the answer of the said defendants is very uncertain, evasive an insufficient in law to be replied *into* by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied *into*, and not herein hereby well and sufficiently replied *into*, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct and humbly prays as in and by her said bill she hath already prayed.

F. H. DEXTER,
JOSÉ HERNANDEZ,
*Solicitors for Complainant.*

*Order Postponing Hearing of Motions to Strike Out Pleas, etc.*

(March 2, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS GARROZI
*vs.*
TOMAS GARROZI ET AL.

Order.

Now comes the complainant herein, Juana Dastas and filed her notice of motion to strike out the plea of Quintin G. Ramirez and the joint plea of Tomas Garrozi, Domingo Piazza and Juana Maria Gonzalez for lack of certificates and improper verification; also for leave to amend the bill and the prayer thereof. To all of which said de-

fendants by their solicitor C. M. Boerman, Esq. objects, and upon his motion time for the hearing of said motion is postponed until Ma-ch 15, 1904, at 10 o'clock A. M.

47 *Stipulation.*

(Filed March 15, 1904.)

In the District Court of the United States for Porto Rico, Sitting at Ponce. In Equity.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

It is agreed between the complainant and all the defendants herein, the complainant being represented by F. H. Dexter and José Hernandez and the defendants by C. M. Boerman, as follows:

The answers now on file by the defendants herein, respectively shall stand as answers to the amended bill of complaint.

Complainant within two days shall file her general replication to said answers verification of which is waived.

The said case, then being at issue, shall be referred to an examiner to be appointed by the Court to take all the testimony of the parties herein, which said examiner shall make his report not later than the ninth day of May, without prejudice to the taking of the testimony of witnesses abroad, in accordance with law and by order of the Court.

F. H. DEXTER,
JOSÉ HERNANDEZ,
*Solicitors for Complainant.*
C. M. BOERMAN,
*Solicitor for Defendants.*

*Opinion.*

(March 16th, 1904.)

The United States District Court for Porto Rico.

MARCH 16, 1904.

JUANA DASTAS GARROZI, Complainant,
*vs.*
TOMAS GARROSI ET AL., Defendants.

Opinion.

This action was begun by Juana Dastas Garrosi, as the wife of Tomas Garrosi, against him in the Insular District Court, in October, 1901, seeking to recover her interest in the conjugal property. They had not then divorced. It also sought to annul certain conveyances

of real estate and mortgage credits, which were claimed to be community property, that had been made by the husband to Juana Maria Gonzalez and Domingo Piazza, and they were also made de-
48 fendants. By proper proceedings the action was transferred to this Court and the complainant having elected to prosecute it in Equity, a reformed bill was filed, making Quintin G. Ramirez, who had purchased one of the credits, a defendant.

The defendants demurred to the bill upon the ground that the complainant was a feme covert and therefore without right to sue. A married woman must sue by her next fried. Equity rule 87 provides for her doing so; and if she does not, a demurrer will lie. This was confessed by the complainant thereupon filing an amended bill, suing in the name of her next friend, Luis Dastas, and therefore the demurrer need not be further considered.

The defendants Tomas Garrozi, Domingo Piazza and Juana Maria Gonzalez filed and answer uniting in it a plea also,

The defendant Ramirez filed a separate answer, a plea being also embraced in it. The cause was submitted by the defendants upon the pleas and also upon the motion of the complainant to strike same. The ground for both pleas is the same, to wit: that the parties not having been divorced, the wife could not maintain a suit as to the community property; that so long as the matrimonial community existed she could not sue as to the conjugal property. This is matter in abatement

The motion to strike the pleas was upon the ground that there was no certificate by the Solicitor that in his opinion they were well founded in law. This was supplied however as to each Plea.

Also that the verification by the defendants was insufficient in failing to state that the plea was not interposed for mere delay; also that the plea of Tomas Garrozi, Domingo Piazza and Juana Maria Gonzalez, as well as their answer, went to the entire bill. The latter is true, and is not allowable.

It is true that a wife cannot sue for her part of the conjugal earnings and profits until after a dissolution of the marriage, but by Article 1392 of the local Civil Code, the estate arising during marriage belongs upon its dissolution equally to her. Until then the husband is the administrator of it and he may alienate or encumber it in good faith and for a consideration, but the wife can-
49 not do so.

The defendant however, cannot plead to the whole of a bill and at the same time answer all of it. He may plead to a part of it and answer the rest, or he may plead to all of it. A plea to the whole bill is overruled by an answer to all of it. Such an answer waives the plea and it should be disregarded.

12 Fed. Rep. 225. Crescent City *vs.* Butchers, etc. Co.
66 Fed. Rep. 216. Hudson *vs.* Randoslh.
79 Fed. Rep. 865 Huntington *vs.* Laidley etc.

Equity Rule 37 does not authorize a defendant to both plead to and answer the entire bill. It applies where there is a plea to a part

of a bill and an answer as to the residue, which also extends in part to some matter embraced by the plea.

All question as to the pleas is however obviated because the complainant moves to amend the bill by averring that since it was filed a divorce has been granted, and to enlarge the prayer by asking the taking of an account by a Master. The proposed amendment is embraced in the motion and it is right and equitable to permit it to be filed, and it is so ordered. The replications of the complainant to the two answers, which were tendered March 2, 1904 are ordered to be filed, and the cause will proceed.

WM. H. HOLT, *Judge.*

(Thereupon the replications were filed.)

*Motion to Appoint Examiner to Take Testimony.*

(Filed April 2, 1904.)

In the District Court of the United States for Porto Rico, Sitting at Ponce. In Equity.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Motion to Appoint Harry P. Leake, Esq., Examiner to Take the Testimony in the Above Case.

Now comes the complainant herein, by her attorneys F. H. Dexter and José Hernandez, and represents to this honorable Court that it having been stipulated betwwen the parties herein that this case when at issue should be referred to an examiner to take all
50 testimony of the parties herein, which said examiner shall make his report not later than the ninth day of May, and this case being now at issue, the complainant having filed her several replications to the answers of the defendants herein, and Harry P. Leake being agreeable to all the parties herein to act as such examiner, the complainant now moves this honorable Court to appoint him as such examiner in the above case

F. H. DEXTER,
JOSÉ HERNANDEZ,
*Solicito-s for Complainant.*

*Order Appointing Examiner for the Taking of Testimony.*

(April 4, 1904.)

The United States District Court for Porto Rico, Sitting at Ponce.

JUANA DASTAS
*vs.*
TOMAS GARROSI ET AL.

Order Appointing Examiner for the Taking of Testimony.

Now, on this 4th day of April, 1904, in accordance with stipulation of parties, this cause is referred to Mr. H. P. Leake for the taking of testimony herein as Special Examiner. Such testimony shall be taken and submitted not later than the 9th day of May, 1904.

Signed in chambers at San Juan, Porto Rico, April 4, 1904.

WM. H. HOLT, *Judge.*

*Amendment to Answer to Amended Bil- of Complaint and Telegram from Complainant's Solicitor Allowing Same to be Filed.*

(Filed April 11th, 1904.)

United States District Court for Porto Rico.

JUANA DASTAS GARROSSI
*against*
TOMAS GARROSSI ET AL.

The defendant amends hereby his answer in answering the amended bill of complaint herein as follows:

By inserting at the end of his answer the following paragraph: "and the defendant Garrossi further answering says that the divorce between him and the complainant was granted to him for the adultery of the complainant and without any fault of his, and
51 that she therefore is not entitled to any share of the property of the matrimonial society even if there should have been any."

C. M. BOERMAN,
*Defendant's Solicitor.*

Tomas Garrossi under oath says that the foregoing amendment is true in substance and fact.

TOMAS GARROSSI.

Sworn to before me this 11th day of April, 1904.

A. AGUAYO,
*Deputy Clerk.*

*Telegram.*

SAN JUAN, 11 *April*, 1904.

C. M. Boerman, Ponce:

You may file amendment to answer but testimony to be taken first week in May.

DEXTER.

*Order for a Commission to Take Testimony to Issue.*

(April 29th, 1904.)

United States District Court for Porto Rico.

JUANA DASTAS DE GARROSSI
*against*
TOMAS GARROSSI ET AL.

Upon the affidavit of Tomas Garrossi hereto attached it is her-by ordered in open Court tha- upon the service of the copy of the interrogatories which were submitted herewith upon the complainant or her Solicitors the complainant mat file within five days after such service her cross interrogatories, and the defendant may five days after such filing of the cross interrogatories in the Clerk's office of this Court at Ponce where this suit is pending file his redirect interrogatories, and thereupon all of said interrogatories shall be forwarded with a commission, which the Clerk of this Court shall then issue from this Court, to Simon Damiani United States Consular agent at Bastia Corsica France, that he or his successor in office or substitute therein, after being sworn as provided by the oath annexed to the commission, may take the testimony of Domingo Piazza in the above entitled cause at the earliest practicable date and shall return such testimony subscribed by said witness and duly vrrified with all convinient speed and diligence to this court.

Given under my hand this April 29th, 1904.

WM. H. HOLT, *Judge.*

52 *Order Extending Time for the Taking of Testimony and the Report Thereof by the Commissioner or Examiner Heretofore Appointed.*

(May 3, 1904.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Order Extending Time for the Taking of Testimony and the Report Thereof by the Commissioner or Examiner Heretofore Appointed.

Now on the 2nd day of May, 1904, appeared in open Court complainant, by her Attorneys F. H. Dexter and José Hernandez, for an order extending the time for the taking of testimony and the reporting of the same to this Court by the Commissioner or Examiner heretofore appointed.

It appearing to this Court that due notice have been given of such motion to Solicitor for defendants and no opposition being made thereto and, it appearing to the Court, upon the affidavit of José Hernandez, Filed herein, that it has been impossible to obtain copies of alleged material and important documents which complainant requires to sustain the issues in this cause, and that due diligence has been made to obtain the same; and it appearing that defendants have applied for a commission to take testimony abroad, which commission is still pending, it is therefore

Ordered, that the time for the taking of testimony and filing of report herein by Mr. H. P. Leake, the Commissioner or Special Examiner herein *id* hereby extended to and including May 30th, Nineteen hundred and four.

WM. H. HOLT, *Judge.*

*Stipulation Extending Time of Special Examiner to Report to June 30, 1904.*

(Filed May 25, 1904.)

U. S. District Court for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZZI.

Hearing Before Special Examiner.

53 *Stipulation.*

It is hereby stipulated and agreed that the Special Examiner H. P. Leake have further time and until the 30th day of June, 1904 in which to file his report of the evidence herein.
May 24, 1904.

JOSÉ HERNANDEZ,
*Solicitor for Complainant.*
C. M. BOERMAN,
*Solicitor for Defendant.*

*Order Extending Time for the Special Examiner to File Report.*

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI.

Order Extending Time to Special Examiner in Which to Report.

It is hereby ordered, taking into consideration the stipulation dated May 24th, 1904, filed herein, that the special examiner, H. P. Leake, have until the thirtieth day of June, 1904, in which to file his report of the testimony in this case.
Given under my hand this May 25, 1904.

WM. H. HOLT, *Judge.*

*Commission for the Taking of Testimony Abroad.*

(Issued May 31, 1904.)

UNITED STATES OF AMERICA, *District of Porto Rico:*

The President of the United States of America to Simon Damiani, United States Consular Agent, his successor in office or substitute therein, Bastia, Corsica, France, Greeting:

Know ye, That we, in confidence of your prudence and fidelity have appointed you commissioner and by these presents do give you full power and authority, diligently to examine upon his corporal oath or affirmation before you to be taken, Domingo Piazza to give testimony in a certain cause now pending undetermined in the District Court of the United States of America for Porto Rico, wherein Juana Dastas is plaintiff and the said Tomas Garrozi *et al.* are defendants, touching the premises, on the interrogatories
54 hereunto annexed.

And before beginning the said examination of the witness you will take and subscribe to an oath before a notary public or a Judge of a Court that you will faithfully comply with this commission, which oath shall be in the following form: to wit; "I hereby make oath that I shall faithfully comply with the commission issued to me by the District Court of the United States for Porto Rico for the taking of testimony of witness Domingo Piazza in behalf of the defendant in the case of Juana Dastas—*vs.*—Tomas Garrozi *et al.*, and shall return the same, together with the testimony of such witness to the said Court fully and faithfully as given by him."

And you shall also administer to the witness who may testify the following oath: "Do you solemnly swear that you will make true answer to the interrogatories now about to be propounded to you as a witness in the case of Juana Dastas—*vs.*—Tomas Garrozi *et al.*, so help you God.

And we do hereby require you, before whom such testimony may be taken, to reduce the same to writing and have it signed by the witness with a certificate signed by you showing compliance with this commission, and after closing up the same, under your hand and seal if you have one, directed to H. H. Scoville; Clerk of the United States District Court for Porto Rico at San Juan, Porto Rico, and that you return the same when executed as above directed, annexed to this writ, with the title of the cause endorsed on the envelope of the commission into the said District Court before the Judge thereof with all convivient speed.

Witness, the Honorable Wm. H. Holt Judge of the District Court of the United States for Porto Rico, this 31st day of May A. D. 1904 at Ponce, Porto Rico.

Attest:

H. H. SCOVILLE,
*Clerk U. S. District Court of Porto Rico,*
By A. AGUAYO,
*Deputy Clerk.*

*Entry.*

(August 13, 1904.)

55 Equity. No. 107.

JUANA DASTAS
*vs.*
TOMAS GARROZZI ET AL.

Deposition of Domingo Piazza received and filed.

*Entry upon Order Book.*

September 26th 1904.

No. 107.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Comes the Special Examiner heretofore appointed to take testimony in this case and files his report of the testimony taken herein.

*Motion by Complainant to Suppress the Deposition of Domingo Piazza.*

(Filed September 27th, 1904.)

In the United States District Court for the District of Porto Rico, Sitting at Ponce. In Equity.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Complainant's Motion to Suppress the Deposition of Domingo Piazza.

Now comes the complainant herein, by her solicitor- F. H. Dexter and José Hernandez, and moves this Honorable Court to suppress the deposition of Domingo Piaza, a witness examined in this case on the part of the d-fendant before Simon Damiani Examiner on the 13 day of July, 1904, for the following reasons:

1. Because the applicant failed to give ten days' notice to the complainant herein to file her cross-interrogatories, as provided by Equity rule 67.

3. Because no notice was given to complainant of the intended

application for a commission and no opportunity was given her to oppose the same.

4th. Because of the failure of the applicant to serve notice upon complainant of the time and place of taking this deposition.

5. Because of the failure of the applicant to sign the original interrogatories filed herein, contrary to common usage in Equity
56 cases.

6. Because of the insufficiency of the certificate of the Commissioner attached to said deposition, in failing to state the reason of taking the same; the service of notice of any kind upon the adverse party, that said deposition remained in his possession and under his seal until by him directed to this Court: the person by whom it was written, and that the same was done in presence of deponent.

7. Because said deposition was opened out of Court, not in the presence of the parties, and without the consent of the adverse parties.

8. Because it does not appear from the certificate attached to said deposition that deponent knew English, that an interpreter was appointed by order of Court, and that the deposition was translated to him.

San Juan 26 day of Sep. 1904.

F. H. DEXTER.
JOSÉ HERNANDEZ.

*Additional Motion to Suppress the Deposition of Domingo Piazza.*

(Filed Sept. 29, 1904.)

In the United States District Court for the District of Porto Rico, Sitting at Ponce. In Equity.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Now comes complainant by her solicitors F. H. Dexter and José Herna-dez as supplemental to motion of complainant to suppress said deposition which motion was filed September 26, 1904, and moves this Honorable Court to suppress the deposition of Domingo Piazza for the additional reason that said deposition was not taken within the time prescribed by the rules of Equity for the taking of testimonhy nor within the time prescribed by Orders of this Court.

San Juan, September 28, 1904.

F. H. DEXTER,
JOSÉ HERNANDEZ,
*Solicitor- for Complainant.*

*Exceptions to Report of Examiner.*

(Filed September 29, 1904.)

In the United States District Court for the District of Porto
57 Rico, Sitting at Ponce. In Equity.

JUANA DASTAS
*vs.*
TOMAS GARROZZI ET AL.

Exceptions by Complainant to the Report of the Examiner.

Now comes complainant by her Solicitors F. H. Dexter and José Hernandez and excepts to the report of the Examiner H. P. Leake in all the testimony of the defendants herein and the witnesses on their behalf examined which was objected to at the time of the taking of the testimony which objections will more fully appear on said report as well as all other objections to any of such testimony.

San Juan Sep. 28, 1904.

F. H. DEXTER AND
JOSÉ HERNANDEZ,
*Solicitors for Complainant.*

*Motion to Strike Out the Testimony of Josefa and Luisa Dastas.*

(Filed September 29th, 1904.)

In the District Court of the United States for Porto Rico, Sitting at Ponce. In Equity.

JUANA DASTAS
*vs.*
TOMAS GARROZZI ET AL.

Complainant's Motion to Strike out the Testimony of Josefa and Luisa Dastas Contained in the Report of the Examiner.

Now comes complainant by her solicitors F. H. Dexter and José Hernandez and moves this Honorable Court to strike out the testimony of Josefa and Luisa Dastas referred to in the report of the examiner for the reason that their testimony was taken on Monday, May 2nd. 1904 after complainant'ss motion of April 28 had been presented to the Examiner to postpone the hearing which motion was sustained and after this Court had postponed taking of such testimony.

The testimony of these two witnesses was illegally taken because the hearing had already been postponed and complainant was de-

prived of her right to cross-examined said witnesses and to be present at their examination.

San Juan, September 28, 1904.

F. H. DEXTER,
58 *Solicotors for Complainant.*

*Order Sustaining Motion to Suppress Deposition, Etc.*

(Oct. 3, 1904.) (October 3, 1904.)

In the District Court of the United States for Porto Rico.

Bill in Equity.

JUANA DASTAS
*vs.*
TOMAS GARROZZI ET AL.

Order.

Now, to wit, on October 3, 1904, this cause having come on for final hearing on law and facts, and also on motion to suppress the deposition of Domingo Piazza, said motion to suppress said deposition is sustained, to which defendants except and the parties agreeing thereto, it is

Ordered hereby that this cause be submitted for final hearing, and the same is referred to a Special Master to report as to law and facts; and in the event the parties are unable to agree on such Special Master, the Court will appoint one by order hereafter.

CHAS. F. McKENNA, *Judge.*

*Appointment of Special Master.*

(October 3, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

On this third day of October, 1904, in the Chambers of the Court at San Juan, appear the above entitled Complainant by her Solicitors F. H. Dexter and José Hernandez and Defendants by their Solicitor C. M. Boerman Esq. Defendants by their said Solicitor move for leave of Court to ask for the issuance of a new commission for the taking of the testimony of Domingo Piazza, an absent witness residing in Corsica, for the reason that the testimony of the said Domingo Piazza taken under a previ-us commission has been suppressed, and

upon the hearing of such motion same is denied, to which defendants except. Thereupon by agreement of parties this cause is referred to a Special Master for the purpose of reporting his findings both as to the law and facts upon the whole case and to frame
59 and render a decree to be submitted to the Court herein upon all the issues and for that purpose such Master shall have the right to pass upon the competency, relevancy and materiality of all testimony offered by either party before the examiner and upon the objections already made or which may be made in accordance with law.

By agreement N. B. K. Pettingill is appointed such Special Master and he is required to report his findings not later than November 1, 1904.

F. McKENNA, *Judge.*

*Motion to Amend Bill of Complaint in Matter of Form.*

(Filed October 18, 1904.)

In the District Court of the United States for Porto Rico, Sitting at Ponce. In Equity.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Motion to Amend Bill of Complaint to Conform to Proof.

Complainant herein prays for an order allowing an amendment to her bill of complaint in the following respects, to wit:

I.

On the second page thereof, to amend the paragraph beginning with the words: "Your orator further represents" on the third line of said bill, and ending with the words: "were owners and possessed of the following community property, to wit" on the seventh line of said bill, by su-stituting for the same the following clause: "Your oratrix represents that on the 9th day of June, 1902, a decree of divorce was entered dissolving the bonds of matrimony between her and defendant Tomas Garrozi, and that upon said date your oratrix was entitled to a one half interest of the following community property (Bienes gananciales) herein after set forth, as well as in all other community property and assets of every kind and description.

II.

On the second page of said bill of complaint, to substitute for the paragraph beginning with "b;" the following paragraph: "(B) A mortgage indebtedness of 80,135.31 pesos represented by a *pacto*

*de retro* or conditional sale executed by Gustavo and Quintin
60 Ramirez for the sum of 80,135.31 pesos, according to the deed executed May 31, 1899, before the notary Public, Don José R. Nazario de Figueroa; which said mortgage indebtedness was satisfied by the payment to defendant Tomas Garrozi of the sum of 48,000 gold, paid by the said Ramirez, for the use and benefit of Tomas Garrozi and complainant, through defendant Juana Maria Gonzalez, to whom said mortgage indebtedness had been previ-usly transferred by said Garrozzi wrongfully and fraudulently as hereinafter set forth."

III.

On page 2 of said bill of complaint in the paragraph thereof beginning with "(c)," strike out the words in the last two lines of said paragraph, "owned by Tomas Olivari Santo and his mother Mrs. Adela.," and substitute the following: "inscribed in favor of Juana Maria Gonzalez."

IV.

To amend the next to the last paragraph of said bill of Complaint on page two thereof, beginning with the words, "(d). A mortgage credit on the coffee plantation known and designated as "Leoncor," by substituting therefor the following: "(d). A coffee plantation known and designated as "Leonor" upon which a mortgage had been executed in favor of defendant Garrozzi since the date of his marriage with the complainant, for the sum of 23,680 pesos."

"On the second day of August, 1900, defendant Garrozi fraudulently and without consideration and for the purpose of defeating complainant of her right therein, assigned and transferred this mortgage credit to defendant Domingo Piazza for the false and simulated consideration of $8,400, and thereafter, by a decree of the District Court of Ponce in the foreclosure suit instituted by the said Piazza as Trustee for defendant Garrozi, the said mortgage was foreclosed and the property known as "Leonor" was adjudicated absolutely to the defendant Domingo Piazza, but your oratrix avers that this adjudication to the said Piazza was a constructive trust for defendant Garrozzi and your complainant for the interest which they respectively had therein."

61 "Your oratrix further represents that by a fraudulent deed executed August 1, 1902, defendant Piazza fraudulently, without consideration and in collusion with defendant Garrozi and Juana Maria Gonzalez, transferred the said plantation Leonor to the said Juana Maria Gonzalez for the false and simulated consideration of $6,000, but your oratrix avers that the said transfer was made wholly without consideration and for the use and benefit of defendant Garrozi, and that said plantation was and is worth the sum of $25,000."

V.

On page four of said bill of complaint, to insert after the word, "said" where it occurs on the seventh line of said page, and before

the words, "sugar plantation Maria Antonia" where they occur on the said seventh line of said page, the following words: "mort-age indebtedness secured by the said *pacto de retro* or conditional sale upon said."

VI.

To strike out all of the second paragraph on page four of said bill of complaint, beginning with the words, "Your orator further represents" and ending with the words, "coffee plantation "Luisa," Subdivision (c), to defendant Domingo Piazza y Pietri," and substitute the following: "Your oratrix further states that by a decree of the District Court of Ponce, on the 4th day of June, 1900, rendered in the foreclosure suit brought by defendant Garrozzi to foreclose the foregoing mortgage on one undivided half of the said plantation "Luisa," one half of the said plantation was adjudicated to him and your oratrix states that by a decree of the District Court of Ponce of June 19, 1900, rendered in a suit instituted by defendant Garrozi to [illegible]se the foregoing mortgage upon the remaining undivided [illegible]aid property, there was adjudicated to the said Garrozi the [illegible]ng half absolutely of the said plantation "Luisa."

[illegible]d your oratrix further represents that on the first and fourth days of August, 1900, respectively, before Manuel Solis, Notary Public in Youco, Porto Rico, defendant Garrozi as administrator of the aforesaid community property fraudulently and wrongfully conveyed and assigned, without consideration whatsoever to defendant Domingo Piazza the said plantation "Luisa" for the simulated and fictitious sums of $10,000 and $6,000, respectively, and your oratrix states that on the first day of August, 1902, defendant Piazza, by a false fraudulent and fictitious transfer, in collusion with defendant Garrozi and for his benefit and in trust for him, transferred the said coffee plantation "Luisa" to defendant Juana Maria Gonzalez for the fictitious consideration of $10,000, whereas the true value of said plantation was and is the sum of $40,000.

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VII.

On page four of said bill of complaint, to strike out all of that paragraph beginning with the words, Your orator further represents" and ending with the words, "coffee plantation Leonor," subdivision (d) to defendant Domingo Piazza y Pietri."

VIII.

On page five of said bill of complaint, after the words, "to the defendant Domingo Piazza y Pietri," on the fifth line of said page, add the following: "And your oratrix avers that, in pursuance of the fraudulent design and collusion between defendants Garrozzi, Domingo Piazza and Juana Maria Gonzalez, and without any real consideration whatsoever and for the purpose of tran-ferring this mortgage credit to defendant Juana Maria Gonzalez in trust for the use and benefit of defendant Garrozi, the said defendant Domingo Piazza, on August 1, 1902, by a fraudulent and simulated conveyance, trans-

ferred the same to defendant Juana Maria Gonzalez for the pretended consideration of $4,000 pesos. But said Mortgage credit was and is worth the sum of $12,000.

IX.

On page five of said bill of complaint, add after the words "Mercedes in subdivision (f) to the defendant Domingo Piazza y Pietri," which occur in the 14th and 15th line- thereof, the following: "And your oratrix avers that, in pursuance of the fraudulent design combination and collusion existing between defendants Garrozi, Do-
63 mingo Piazza and Juana Maria Gonzalez, to defraud your oratrix, the said mortgage credit was by a fraudulent and simulated conveyance transferred by defendant Domingo Piazza y Pietri, on the 1st day of August, 1902, to defendant Juan Maria Gonzalez for the pretended consideration of $4,000, but your oratrix avers that in fact there was no consideration for such tran-fer and the same was made from defendant Piazza to defendant Juana Maria Gonzalez for the use and benefit of defendant Garrozi and in fulfillment of the fraudulent design to deprive your oratrix of her interest and rights therein, and said mortgage credit was and is worth $15,000."

X.

On page five of the said Bill of Complaint, to amend all of that paragraph beginning with the words, "Your orator further represents" and ending with the words, "subdivision (b) of this Bill of Complaint to the defendant Quintin G. Ramirez y Ramirez," by substituting the following: "Your oratrix further represents that defendant Tomas Garrozi, in pursuance of said fraudulent design to deprive your oratrix of her rights which she had acquired by law in and to the aforesaid properties and combining and colluding with defendant Juana Maria Gonzalez and acting as her attorney in fact, on the 2nd day of July, 1900, fraudulently executed a deed of resale and cancellation of the said mortgage indebtedness or *pacto de retro* or conditional sale to and in favor of defendant Quintin G. Ramirez y Ramirez for the actual sum of $48,000 gold, which was then and there paid by defendant Quintin G. Ramirez y Ramirez to defendant Garrozi, of which said sum of $48,000 one half belongs to your oratrix."

XI.

By making the name of complainant read Dastas instead of Dartas whereever it occurs in said Bill of Complaint.

Complainant further represents that the foregoing amendments are purely matters of form to adapt the allegations of said
64 Bill of Complaint to the proof which has already been taken herein, and that the same are in furtherance of justice and they are not asked for delay or for any other reason than as above stated.

Complainant prays that, upon the granting of an order allowing such amendments, she may file in the Clerk's office within a short time to be named by the Court or the Judge thereof, a reformed Bill

of Complaint written so as to set forth all of the amendments herein contained, which said reformed Bill of Complaint, containing all the amendments heretofore made in this cause will be filed *nunc pro tunc* as of March 10, 1904, as the amendments now prayed for do not affect the issues or the proofs herein, but conform to the proofs already taken.

San Juan, Porto Rico, October 18, 1904.

F. H. DEXTER,
*Solicitor for Complainant.*

*Order Referring to Special Master Motion of Complainant to Amend Her Bill of Complaint.*

(Oct. 24th, 1904.)

In the District Court of the United States for Porto Rico, Sitting at Ponce.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Order Referring to the Special Master the Motion of Complainant to Amend Her Bill of Complaint to Conform to Proof.

Now, on this 24th day of October, 1904, came the parties herein, the complainant by her solicitors F. H. Dexter and José Hernandez and the defendants by their Solicitor C. M. Boerman, Esq.

Both parties agreeing hereto, the Court now orders that the motion filed by complainant for the amendment of her bill be, and it is hereby referred to the Special Master, N. B. K. Pettingill, Esq., who will examine the same and report thereon on Wednesday morning next at 10 o'clock as to whether the amendments proposed by complainant are made as to matters of form or whether such amendments constitute a departure or substantial change of the cause of action of complainant.

Upon the coming in of the Master's report upon this reference the Court will decide what may be due and proper with reference hereto and to the said amendments.

CHAS. F. McKENNA, *Judge.*

*Report of Special Master in Chancery on Proposed Amendments to Complainant's Bill.*

(Filed Oct. 26th, 1904.)

In the District Court of the United States for Porto Rico, Sitting at Ponce.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

To the Judge of the Court aforesaid:

The undersigned, to whom was referred as Special Master in Chancery, by order dated October 24th, 1904, the motion filed in this cause by the complainant on the 18th day of the same month for leave to amend her bill of complaint so as to conform to the proofs taken in said cause, said reference being for the purpose of reporting whether said proposed amendments were simply matters of form, or substancially affected the rights of the parties on the case made by complainant's bill as heretofore amended, begs leave to report as follows:

*First.*

That the amendments proposed in paragraphs 3, 5, and 11 are merely matters of form and do not affect the merits of the issues as already joined between the parties.

*Second.*

That the amendments proposed in paragraphs 1, 2, and 10 contain matters affecting the substantial rights of the respective parties in that said amendments enlarge the amount recoverable by
66 the complainant if her theory of the law of the case should be sustained by the Court; but that the same are consistent with and germane to the case of the plaintiff as made upon the issues already joined, and do not constitute a departure therefrom; said changes being devised to make the allegations of the bill conform to the details of the proof as taken before the Examiner.

*Third.*

That the amendments proposed in paragraphs 4, 6, 8, and 9 contain matters not only affecting the substantial rights of the respective parties but also some matters arising and coming into existence since the filing of complainant's original bill, which matters, in the opinion of the Master are not only not consisting with or germane to the theory of complaina-t's case as originally made but also are not proper subjects for amendment at any time and can only be

brought to the attention of the Court by the filing of a supplemental bill for that purpose.

All of which is respectfully submitted.

N. B. K. PETTINGILL,
*Special Master in Chancery.*

*Exceptions of Complainant to Report of Special Master.*

In the District Court of the United States for Porto Rico, Sitting at Ponce.

(Filed Oct. 26, 1904.)

JUAN DASTAS
*vs.*
TOMAS GARROZI ET AL.

Exceptions of Complainant to Report of Special Master.

Now comes Complainant herein and excepts to the third paragraph of the report of the Special Master, N. B. K. Pettingill, filed this October 26, 1904, under and upon the reference made to him for the purpose of determining the nature of the proposed amendments desired to be made by complainant in her bill of complaint, and for ground of exception, says:

That she excepts to the findings of the said Master that
57 paragraphs four, six, eight and nine of her said motion to amend her bill of complaint contain matters which is the opinion of the said Master, "are not only not consistent with or germane to the theory of complainant's case as originally made, but also are not proper subjects for amendment at any time and can only be brought to the attention of the Court by the filing of a supplemental bill for that purpose."

Plaintiff says that the said amendments are proper to be allowed by the rules and practice in equity, as they simply contain allegations showing that the alleged mortgage credits described in the original bill were before the institution of this suit foreclosed and for the purpose of showing an additional fraudulent transfer from one of the defendants to another defendant herein made after the institution of this suit.

Wherefore, Complainant moves that the finding of the Master as aforesaid be disapproved and that an order be entered allowing the proposed amendments, giving to defendants time within which to plead thereto and upon such terms as will allow them if they desire, as well as the Complaina-t, to take evidence upon the said amendments.

F. H. DEXTER,
*Solicitor for Complainant.*

*Motion for Leave to Withdraw Replication and to Amend.*

(Filed October 27, 1904.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

JUANA DASTAS
*vs.*
TOMAS GARROSI ET AL.

Motion for Leave to Withdraw Replication.

Now comes complainant herein and respectfully represents to the Court that on the 28th day of October last past she filed her motion to amend her bill of complaint herein, which said motion was by the Court referred to its Special Master the Hon. N. B. K. Pettingill to determine whether the proposed amendments were matter of form or if they were a departure from the case made by
68 the original bill, and the Master having made his report complainant now moves for leave to withdraw her replications filed herein; that her proposed amendments be allowed, and that defendants be allowed a reasonable time to file any new or supplemental answers or other pleadings should they desire to do so to such amendments.

In support to her application to amend her bill as aforesaid Complainant says that the matters and things contained in the said proposed amendments were not known to her until after the evidence was taken in this case before the examiner; that as to the foreclosure of the mortgage credits on the plantation- Leonor and Luisa and the subsequent transfer from defendant Piazza to defendant Juana Maria Gonzalez complainant was not aware and had not been advised prior to the taking of the testimony herein.

Complainant states that since the divorce between her and defendant Garrosi she is and has been in great poverty and distress without the means to pay the fees of the Registrars of Property to obtain the information as to the proceedings in connection with the properties described in her original bill, which said proceedings were made to appear by the exhibits offered in evidence by defendants and now set forth in her said proposed amendments.

Complainant states that she has a meritorious cause of action and that she has been obliged to rely upon the information that she could obtain from friends as to the operations in connection with the properties described in her bill, and that as soon as she — conveniently do so after the arrival of the judge of this Court to Porto Rico she presented her motion to amend.

Complainant further states that such amendments are necessary in the interests of justice in order to conform her case to the proof and by reason of the ruling of the Special Master upon the evidence priviously taken.

F. H. DEXTER,
*Solicitor for Complainant.*

F. H. Dexter, being duly sworn upon his oath says that he is the solicitor for complainant and that upon his best information and belief the facts set forth above are true; that this affidavit is
69 not made by complainant because she is in the city of Ponce.

F. H. DEXTER.

Subscribed and sworn to before me this 26th day of Oct. 1904.

H. H. SCOVILLE, *Clerk.*

*Order Sustaining Motion to Amend Bill, etc.*

(Filed Oct. 27, 1904.)

In the District Court of the United States for Porto Rico, Sitting at Ponce.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Order.

Now, on this 26th day of October, 1904, the parties hereto appear in open court by their respective Solicitors, Complainant by F. H. Dexter and defendants by C. M. Boerman.

The Special Master, N. B. K. Pettingill, to whom had been referred a motion of complainant to amend her bill of complaint, files his report herein, recommending the allowance of amendments proposed by complainant, Nos. 1, 2, 3, 5, 10 and 11, and recom-ending the disallowance of amendments Nos. 4, 6, 8 and 9; and complainant having filed her exceptions to such report, and having filed her motion to withdraw her replications to the answers already filed by defendants, upon hearing of all of said motions and exceptions and after argument of Counsel, it is hereby ordered that the report of the Special Master be confirmed in so far as it recommend- the allowance of amendments Nos. 1, 2, 3, 5, 10 and 11, and the same is disapproved as to his recommendations concerning proposed amendments of Complainant, Nos. 4, 6, 8 and 9; and the Court thereupon sustained the motion of complainant allowing all of the amendments proposed by such motion filed herein on the 18th day of October, 1904, and Complainant shall, before the November Rule day, file her amended bill containing all amendments allowed thereto to this date.

Complainant herein withdraws her general replications to all of the answers of defendants herein.

Defendants are allowed until the December Rule day, 1904, to file such pleading or pleadings as may be proper under the rules and practice in Equity. Complainant shall have fifteen days there-
70 after to file such pleading, in response to such pleadings as may be filed by defendants, as may be proper under the rules and practice in Equity.

The time within which the Special Master, N. B. K. Pettingill, Esq., was required to report, under the reference heretofore made to him of the entire cause, is hereby extended indefinitely, subject to the further orders of thid Court, and such proceedings shall be had and conducted before the said Special Master as may be right and proper in accordance with the rules and practice in Equity after filing the amendments aforesaid and the subsequent pleadings in response thereto, and after the conclusion of any testimony which may be offered by the parties.

The Master shall at as early a date as possible report his finding to this Court upon the entire cause with suggestions or draft for a final decree.

By consent of parties it is hereby ordered that this cause is dismissed as to defendant Quintin Ramirez.

CHAS. F. MacKENNA, *Judge.*

*Amended Bill of Complaint.*

(Filed October 29th, 1904.)

In the District Court of the United States for Porto Rico, Sitting at Ponce.

JUANA DASTAS, a Citizen of the Republic of France,
*versus*
TOMAS GARROZI Y PIETRI, MRS. JUANA MARIA GONZALEZ, and DOMINGO PIAZZA Y PIETRI, Citizens of the Republic of France.

Amended Bill of Complaint.

Juana Dastas, a citizen of the Republic of France, bring- this bill against Tomas Garrozi y Pietri, Juana Maria Gonzalez and Domingo Piazza y Pietri, citizens of the Republic of France, and residing in the Municipality of Yauco, Porto Rico, and thereupon ypur oratrix complains and says that she contracted matrimony in the
71 Municipality of Yauco, Porto Rico, on the twelfth day of May, A. D., 1886, with the said defendant Tomas Garrozi y Pietri, and that the said contract of matrimony was made without any antenuptial agreement as to the dower, conjugal or community property that they then had or might accumulate, and that your oratrix lived with and sustained the marriage relation with the said defendant Tomas Garrozi y Pietri until the 28th day of November, A. D., 1898, when they separated.

Your oratrix represents that, on the 9th day of June, 1902, a decree of divorce was entered dissolving the bonds of matrimony between her and defendant Tomas Garrozi, and that upon said date your oratrix was entitled to a one half interest in the following community property *(bienes gananciales)* hereinafter set forth, as well as in all other community property and assets of every kind and description.

(*a.*) Two masonry houses located in Borinquen Street of the Municipality of Yauco, and being recorded in the municipal register under the respective numbers 40 and 42.

(*b.*) A mortgage indebtedness of 80,135.31 pesos represented by a *pacto de retro* or conditional sale executed by Gustavo and Quintin Ramirez for the sum of 80,135.31 pesos according to the deed executed May 31, 1899, before the Notary Public, Don José R. Nazario de Figueroa; which said mortgage indebtedness was satisfied by the payment to defendant Tomas Garrozi of the sum of $48,000 gold, paid by the said Ramirez, for the use and benefit of Tomas Garrozi and complainant, through defendant Juana Maria Gonzalez, to whom said mortgage indebtedness had been priviously transferred by said Garrozi wrongfully and fraudulently as hereinafter set forth.

(*c.*) A mortgage credit on the coffee plantation known and designated as "Luisa" and located in the barrio of Rancheraas, in the municipality of Yauco, for the sum of twenty thousand pesos, which the said defendant Tomas Garrozi y Pietri purchased from Marcial Santoni y Ortiz, the said plantation now being inscribed in favor of Juana Maria Gonzalez.

(*d.*) A coffee plantation known and designated as "Leo-
72 nor," upon which a mortgage had been executed in favor of defendant Garrozi since the date of his marriage with complaina-t, for the sum of 23,680 pesos.

On the second day of August, 1900, defendant Garrozi fraudulently and without consideration and for the purpose of defeating complaina-t of her rights therein, assigned and transferred this mortgage credit to defendant Domingo Piazza for the sale and simulated consideration of $8,400, and thereafter, by a decree of the District Court of Ponce in the foreclosure suit instituted by the said Piazza as trustee for defendant Garrozi, the said mortgage was foreclosed and the property known as "Leonor" was adjudicated absolutely to the defendant Domingo Piazza, but your oratrix avers that this adjudication to the said Piazza was a constructive trust for defendant Garrozi and your complaina-t for the interests which they respectively had therein.

Your oratrix further represents that by a fraudulent deed executed August 1, 1902, defendant Piazza fraudulently, without consideration and in collusion with defendant Garrozi and Juana Maria Gonzalez, transferred the said plantation "Leonor" to the said Juana Maria Gonzalez for the false and simulated consideration of $6,000, but your oratrix avers that the said transfer was made wholly without consideration and for the use and benefit of defendant Garrozi, and that said plantation was and is worth the sum of $25,000.

(*e.*) A mortgage credit for the sum of twelve thousand pesos upon the coffee plantation named "Juanita," in the Barrio of Aguas Blancas in the Municipality of Yauco, the said coffee plantation being the property of Mr. Isidoro Pintado.

(*f.*) A mortgage credit for the sum of ten thousand four hundred and seventy pesos and thirty six centavos upon the coffee plantation named "Mercedes," which is composed of three parts or parcels of

land, two of the said parts or parcels of land being located
73 in the barrio of Pasto, municipality of Guayanilla, and the other part or parcel of land being located in the barrio of Aguas Blancas, municipality of Yauco, said plantation being the property of Mrs. Mercedes Lluvera.

Your oratrix further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, as administrator of the aforesaid community property, fraudulently conveyed, transferred and sold, by a public notarial deed, on the twenty sixth day of December, A. D. 1899, and before José R. Nazario de Figueroa, a notary public in San German, Porto Rico, for the simulated and pretended consideration of six thousand pesos, the aforesaid masonry houses in subdivision "a" to the defendant Juana Maria Gonzalez.

Your oratrix further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, as administrator of the aforesaid community property, fraudulently conveyed, transferred and sold, by public notarial deed, on the twenty-fifth day of May, A. D. 1900, and before Manuel Solis, a notary public in Yauco, Porto Rico, for the simulated and pretended consideration of forty eight thousand dollars, the said mortgage indebtedness secured by the said *pacto de retro* or conditional sale upon said sugar plantation "Maria Antonia" in subdivision "b," with appurtenances thereto, to the defendant Juana Maria Gonzalez.

Your oratrix further states that by a decree of the District Court of Ponce, on the 4th day of June, 1900, rendered in the foreclosure suit brought by defendant Garrozi to foreclose the foregoing mortgage on one undivided half of the said plantation "Luisa," one half of the said plantation was adjudicated to him, and your oratrix states that by a decree of the District Court of Ponce, of June 19, 1900, rendered in a suit instituted by defendant Garrozi to foreclose the foregoing mortgage upon the remaining undivided half of said property, there was adjudicated to the said Garrozi the
74 remaining half absolutely of the said plantation "Luisa."

And your oratrix further represents that on the first and fourth days of August, 1900, respectively, before Manuel Solis, notary public in Yauco, Porto Rico, defendant Garrozi as administrator of aforesaid community property, fraudulently and wrongfully conveyed and assigned, without any consideration whatsoever to defendant Domingo Piazza the said plantation "Luisa" for the simulated and fictitious sums of $10,000 and $6,000, respectively, and your oratrix states that on the first day of August, 1902, defendant Piazza, by a false, fraudulent and fictitious transfer, in collusion with defendant Garrozi and for his benefit and in trust for him, transferred the said coffee plantation "Luisa" to defendant Juana Maria Gonzalez for the fictitious consideration of $10,000, whereas the true valuation of said plantation was and is the sum of $40,000.

Your oratrix further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, as administrator of the aforesaid community property, fraudulently conveyed, transferred, cessioned and assigned by public notarial document on the first day of August, A. D. 1900, and before Manuel Solis, a notary public in Yauco,

Porto Rico, for the simulated and pretended sum of twelve thousand pesos, the aforesaid mortgage on the coffee plantation "Juanita," in subdivision "e," to the defendant Domingo Piazza y Pietri.

And your oratrix avers that, in pursuance of the fraudulent design and collusion between defendants Garrozi, Domingo Piazza and Juana Maria Gonzalez, and without any real consideration whatsoever and for the purpose of transferring this mortgage credit to defendant Juana Maria Gonzalez in trust for the use and benefit of defendant Garrozi, the said defendant Domingo Piazza, on August 1, 1902, by a fraudulent and simulated conveyance, transferred the same to defendant Juana Maria Gonzalez for the pretended
75 consideration of 4,000 pesos. But said mortgage credit was and is worth the sum of $12.000.

Your oratrix further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, as administrator of the aforesaid community property, fraudulently conveyed, transferred, cessioned and assigned, by public notarial document, and before Rafael Leon y Paz, on the thirty-first day of July, A. D. 1900, in Ponce, Porto Rico, for the simulated and pretended sum of ten thousand four hundred and seventy pesos and thirty six centavos, the aforesaid mortgage on the coffee plantation "Mercedes," in subdivision "f," to the defendant Domingo Piazza y Pietri.

And your oratrix avers that, in pursuance of the fraudulent design, combination and collusion existing between defendants Garrozi, Domingo Piazza and Juana Maria Gonzalez, to defraud your oratrix, the said mortgage credit was by a fraudulent and simulated conveyance transferred by defendant Domingo Piazza y Pietri, on the 1st day of August, 1902, to defendant Juana Maria Gonzalez for the pretended consideration of $4,000, but your oratrix avers that in fact there was no consideration for such transfer and the same was made from defendant Piazza to defendant Juana Maria Gonzalez for the use and benefit of defendant Garrozi and in fulfillment of the fraudulent design to deprive your oratriz of her interest and rights, therein, and said mortgage credit was and is worth $15,000.

Your oratrix further represents that defendant Tomas Garrozi, in pursuance of said fraudulent design to deprive your oratrix of her rights which she had acquired by law in and to the aforesaid properties and combining and colluding with defendant Juana Maria Gonzalez and acting as her attorney in fact, on the 2nd day of July, 1900, fraudulently executed a deed of resale and cancellation of the said mortgage indebtedness or *pacto de retro* or conditional sale to and in favor of defendant Quintin G. Ramirez y Ramirez for the actual sum of $48,000 gold, which was then and there paid
76 by defendant Quintin G. Ramirez y Ramirez to defendant Garrozi, of which said sum of $48,000 one half belongs to your oratrix.

Your oratrix further represents unto your honor that in the divorce proceedings the said honorable District Court made a judicial decree on the fifteenth day of July, A. D. 1901, granting unto your oratrix the sum of seventy five dollars per month and payable monthly in the *from* of alimony pending final adjudication of the

said suit, and that the said Court by their further order on the seventh day of August, A. D. 1901, ordered the said defendant Tomas Garrozi y Pietri to pay unto your oratrix the sum of five hundred and ninyty eight dollars judicial expenses which your oratrix had incurred in defending said suit. And your oratrix further represents that she has been unable to collect either of said sums or any part thereof by reason of the said fraudulent transfers of the aforesaid properties.

Your oratrix further represents unto your honor that each and all the aforesaid sales, transfers and assignements were fraudulent and void, amd at the time of making the aforesaid deeds, cessions and assignments of all the aforesaid properties and mortgages, that the said defendant Tomas Garrozi y Pietri, and each and all of the said parties and cessionees thereof, well knew that one-half the aforesaid properties and mortgages were community property and one-h*laf* belonged to your oratrix, and that they were so then and there conveyed in fraud of your oratrix, and that said defendant Toams Garrozi y Pietri had no means apart from the aforesaid properties and mortgages to settle with your oratrix for her interest in the aforesaid properties and mortgages and to pay to your oratrix her stipulated monthly allowance in form of alimony of seventy five-dollars per month, and the sum of five hundred and ninety-eight pesos as allowed and decreed to your oratrix for judicial
77 expenses by the District Court of Ponce; that the aforesaid sales, transfers, cessions and assignments by notarial documents were fraudulently made, not *bona fide*, and for a mere simulated and pretended consideration, and were made for the express purpose o[f] depriving your oratrix of her rightful and legal interest in the aforesaid properties and mortgages, and to avoid paying the aforesaid monthly allowance and Court expenses as adjudged and decreed by the Honorable District Court for the District of Ponce to your oratrix

That since the filing of her reformed bill of complaint and in the month of June, 1902, the Supreme Court of Porto Rico has granted and absolute divorce from the bonds of matrimony existing between Juana Dastas and Tomas Garrozi.

To the end therefore that your oratrix may have that relief which she can only obtain in a Court of equity, and that the said defendants and each of them may answer the premises, but not upon oath or affirmation, the benefit of which is expressly waived by your oratrix, and she now prays the Honorable court that the said sales, transfers, cessions and assignment of the aforesaid properties and mortgages be set aside, annulled and held for naught and that the defendants be required to surrender up the same to be cancelled and that they and each of them be for ever restrained and enjoined from setting up or claiming any estate, right title, interest in or to the said properties and mortgages, and that an account be taken of all the foregoing properties and assets and all other property in which complainant may have an interest; that a master be appointed to take such accounting and ascertain all the property belonging to the conjugal society and the value thereof, and the parts or portions thereof

which correspond to your oratrix, and upon the filing of this report this court shall decree a partition and division thereof in the proportion of one half to your oratrix, and shall declare by its decree the right of your oratrix as aforesaid in and to the same, and that your oratrix may be decreed to be the owner of one half of the aforesaid properties and mortgages, and have such further or other
78 relief as the nature of the case may require.

F. H. DEXTER,
*Solicitor for Complainant.*

*Plea to Amended Bill.*

(Filed October 31, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

The joint and several plea of defendants Tomas Garrozi, Jua-a Maria Gonzalez and Domingo Piazza y Pietri, by their Solicitor Chas. M. Boerman, to the amended bill of complaint of Juana Dastas, the above named complainant.

These defendants, respectively, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's amended bill to be true in such manner and form as the same are therein set forth and alleged, for plea to the whole of said amended bill, say:

That on the 9th day of June, 1902, a decree of divorce was granted to the defendant Tomas Garrozi from and against the complainant Juana Dastas for cause of adultery on her part, by a final decree of the Supreme Court of Porto Rico, and that therefore she has no claim what ever upon any marriage partnership property or any property in the hands of the defendant at the time of the divorce under the law of Porto Rico.

All of which matters and things these defendants do aver to be true, and they plead this as a bar to said complainant's amended bill, and pray the judgment of this Honorable Court whether they should be compelled or ought to be required to make any other or further answer to the said amended bill, and pray to be hence dismissed with their cost and charges in that behalf most wrongfully sustained.

C. M. BOERMAN,
*Of Counsel for the Defendants.*

I hereby certify that in my opinion the foregoing plea is well founded in law.

C. M. BOERMAN,
*Of Counsel for Defendants.*

79 *Order Referring Plea to Special Master.*

(Filed October 31, 1904.)

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Order.

Now, on this 31st day of Oct. 1904, the defendant Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza y Pietri appear by their solicitor C. M. Boerman and file their joint and several plea to the amended bill of complaint herein. Complainant by her Solicitor, F. H. Dexter, consenting thereto, said plea is now referred by consent also of defendants to the Special Master N. B. K. Pettingill to hear and determine the same and to report thereon at his earliest convenience to the Court.

CHAS. F. McKENNA, *Judge.*

*Report of Master on Sufficiency of Plea.*

(Filed November 2, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Report of Master as to Sufficiency of Plea.

The complainants having amended their bill on the 29th day of October, 1904, and dismissed their cause as against the defendant Quintin Ramirez, and the remaining defendants having on the 31st day of October, 1904 filed their plea to the bill as amended, which plea has been set down for hearing by the complainant upon the question of its sufficiency, and such question having been by the Court referred to the undersigned as Master in Chancery for a decision, it is hereby Ordered and Adjudged that said plea is insufficient as a defence to said bill and the same is hereby overruled.

N. B. K. PETTINGILL,
*Master in Chancery.*

*Exception to Report of Master on Plea.*

(Filed November 2, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

80 Now come the defendants Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza and except to the finding and conclusion of law filed herein by N. B. K. Pettingill, Special Master, in his report and do except to the refusal of the Master to find their joint and several plea to the amended bill of complaint of the complainant sufficient in law.

Respectfully submitted,

C. M. BOERMAN,
*Solicitor for Defendants.*

*Motion to Confirm Master's Report Overruling Plea.*

(Filed November 2, 1904.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Motion of Complainant to Confirm Report of Master, etc.

Now comes complainant herein and moves for an order confirming the report of the Special Master herein overruling the plea filed by defendants to the amended bill, and for an order overruling the said plea.

Complainant further prays for an order requiring defendants to further plea herein if they desire to do so to the amended bill within five days from this date, and requiring complainant to file her pleading in response thereto within two days thereafter; and that if the parties or either of them should desire to take any testimony in support of opposition to the issues presented by the new allegations of such amended or supplemental pleadings, the same shall be taken before the Special Master N. B. K. Pettingill and concluded not later than December 10th next. And not later than December 25th the said Special Master shall make his report and submit his findings herein.

F. H. DEXTER,
*Solicitor for Complainant.*

To the above named defendants or C. M. Boerman Esq., their Solicitor:

Please take notice that on Thursday November 3rd, 1904 the foregoing motion will be presented to the Court or as soon thereafter as counsel can be heard.

F. H. DEXTER,
*Solicitor for Complainant.*

Service of copy of above motion served this 2 day of Nov. 1904.
C. M. BOERMAN,
*S. for Defe'ts.*

81 *Plea.*

(Filed November 3, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

The joint and several plea of Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza, all of the defendants above named to the amended bill of complaint of Juana Dastas, above named complainant.

These defendants respectively, by protestation not confessing or acknowledging all or any of the matters and things in said plaintiff's amended bill to be true in such manner and form as the same are therein set forth and alleged, for a plea to the whole of said amended bill say that, under the Law of Porto Rico, the complaina-t has no right to ask for the delivery to her of any of the property of the conjugal society even if there be any, because the plaintiff has been divorced from the defendant Tomas Garrozi on the statutory ground of adultery on her part and that, under the law of Porto Rico, her husband the said defendant Tomas Garrozi is to remain the administrator of all property belonging to the wife, even of her separate property if there be any. All of which matters and things the defendants do aver to be true and they plead to said plaintif-'s amended bill and pray the judgment of this Honorable Court whether they should be compelled to make any other or further answer to the said amended bill, and pray to be hence dismissed with their cost and charges in that behalf most wrongfully sustained.

C. M. BOERMAN,
*Of Counsel for Defendants.*

I hereby certify that in my opinion the foregoing plea is well founded in po-it of law.

C. M. BOERMAN,
*Of Counsel for Defendants.*

UNITED STATES OF AMERICA, *District of Porto Rico, ss:*

Tomas Garrozi, being duly sworn, deposes and says that he is one of the above named defendants; that the foregoing plea is true in point of fact and is not interpose- for delay.

TOMAS GARROZI.

Subscribed and sworn to before me this third day of No-
82 vember, 1904.

H. H. SCOVILLE,
*Clerk Dist. Court of U. S. for P. R.*
By A. M. BACON, *Deputy.*

*Answer to Amended Bill.*

(Filed November 3, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZZI ET AL.

The Joint and Several Answers of Tomas Garrozi, Juana Maria Gonzalez, and Domingo Piazza y Pietri, the D-fendants, to the Amended Bill of Complaint of Juana Dastas, Complainant.

These defendants respectively now and at all times hereinafter saving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said amended bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer unto, severally answering say:

(1.) That they admit that on or about the 12th day of May, 1886, the complainant herein contracted matrimony with Tomas Garrozi, one of the defendants herein, and that said contract of matrimony was made without any ante nuptial agreement. They further admit that, on or about the 9th day of June, 1902, a decree of divorce was granted to the defendant Tomas Garrozi, dissolving the bonds of matrimony between him and the complainant Juana Dastas, and they allege that such divorce was granted to defendant Tomas Garrozi on the statutory ground of adultery on the part of the complainant, and that therefore, neither upon said date of the divorce or at any time thereafter has complainant been entitled to a one half interest or to any interest in any property belonging to defendant Tomas Garrozi.

(2.) The defendants specifically deny that the complainant has any right, title or interest in the properties described in the amended bill of complaint under letters *a, b, c, d, e* and *f*.

(3.) The defendant Tomas Garrozi upon his own knowledge and the defendants Juana Maria Gonzalez and Domingo Piazza on information and belief aver and show to this honorable Court that the complainant herein at the time of entering into the mar-
83 riage relations or contract with the defendant Tomas Garrozi, did not possess and did not bring in any marriage proportion whatever, and that she never, either before marriage or after marriage, acquired any property either by gift, donation, purchase or earnings of any kind and that at the time of the divorce she did not possess any separate property of her own.

(4.) Defendant Tomas Garrozi upon his own knowledge and the defendants Juana Maria Gonzalez and Domingo Piazza y Pietri upon information and belief, aver and show to this Honorable Court that there never was any marriage community property in existence upon which the complainant would have any claim whatever, and they aver that at the time of the divorce the property possessed by said Tomas Garrozi was in value less than the property which he brought into the marriage at the time of his marriage and that there was no income or increase whatever which could have formed a part of a community property.

(5.) All the defendants herein deny that the defendant Tomas Garrozi at the time of his divorce possessed or owned the properties described in the amended bill of complaint under letters *a*, *b*, *c*, *e* and *f*. They aver that some of those properties at that time did belong to defendant Juana Maria Gonzalez, who acquired them for a valuable consideration during the years 1899 and 1900, and others of those mentioned at the time of the divorce belong to the defendant Domingo Piazza who acquired them for a valuable consideration from the defendant Domingo Piazza during the said years.

And the defendant herein deny any fraudulent intent, combination or collusion in connection with said sales between the parties codefendants herein or any intent to prejudice the right of the complainant in the premises and all the defendants specifically deny any fraudulent design, combination or collusion in connection with the sale or transfer of the properties described in subdivision (*a*) and (*b*). They also specifically deny any fraudulent design, combination or collusion in connection with the conveyance of the plantation "Luisa," the mortgage credit on the plantation "Juanita" and also specifically deny any fraudulent design, combina-
84 tion or collusion in connection with the transfer of the mortgage credit on the plantation "Mercedes;" also they deny any fraudulent design, combination or collusion in connection with the transfer or sale of the sugar plantation "Maria Antonia;" they also specifically deny any fraudulent design, combination or collusion in connection with the conveyance of any of the properties described in the amended bill of complaint, either between Tomas Garrozi and Juana Maria Gonzalez or between Tomas Garrozi and Domingo Piazza or between Domingo Piazza and Juana Maria Gonzalez. And they aver that all these transactions were in good faith and for a valuable consideration.

(6.) The defendants further show to this honorable Court that all

this sales made by Tomas Garrozi of any property, either to Juana Maria Gonzalez or to Domingo Piazza, were made before any alimony *pendente lite* was granted to the complainant by the District Court of Ponce and before any cost was given to her in the said suit and that therefore there was no credit whatever in her favor at the time of such conveyances which could have bee- prejudiced by such conveyances.

(7.) The defendant Tomas Garrozi upon his own knowledge and the defendants Juana Maria Gonzalez and Domingo Piazza upon information and belief, aver that all the properties sold and conveyed to either Juana Maria Gonzalez or Domingo Piazza by Tomas Garrozi were his own separate and particular properties and that the complainant had no share or interest whatever in said properties at the time of such transfers or sales.

(8.) The defendant Juana Maria Gonzalez further show- to this Honorable Court that in a certain proceeding and claim of right, which she presented in the District Court of Ponce on the property described under letter (*a*) in the amended bill of complaint, the said District Court of Ponce has dictated a judgment recognizing her right to said properties and a final judgment was entered in that Court to that effect on the 19th of January, 1903.

(9.) The defendant Tomas Garrozi further shows to yo-r honor that at the time of the divorce there was nothing whatever of any community property in his hands, to a share in which the complainant could lay claim.

And the defendants deny all and all manner of unlawful combination or confederacy wherewith they are by the said amended bill charged; without this, there is any other matter, cause or thing in said complainant's said amended bill of complaint contained material or necessary for these defendants to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true, to the knowledge or belief of these defendants, all of which matters and things these defendants are ready and willing to aver, maintain and prove as this Honorable -ourt shall direct; and they humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

C. M. BOERMAN,
*Solicitor for Defendants.*

Tomas Garrozi and Juana Maria Gonzalez under oath depose and say that they have heard read the foregoing answer to the amended bill of complaint herein and that all the allegations made therein are true to their own knowledge, except as to matters alleged to be upon information and belief, and as to those matters they believe them to be true.

TOMAS GARROZI.
JUANA MARIA GONZALEZ.
Her mark.

Witness:
A. M. BACON.

Subscribed and sworn to before me this 1 day of November, 1904
H. H. SCOVILLE, *Clerk.*

Tomas Garrozi under oath says that he is the attorney in fact of Domingo Piazza defendant herein, that said Domingo Piazza is now absent from this Island and that affiant is well acquainted with all the facts of the case. Affiant makes oath that all the allegations of the foregoing answer refer-ing to Domingo Piazza are true in substance and fact.

TOMAS GARROSI.

Subscribed and sworn to before me this 3rd day of Nov., 1904.
H. H. SCOVILLE, *Clerk.*
By FRANK ANTONSANTI, *D. C.*

86 *Motion to Strike Plea From Files.*

(Filed Nov. 7, 1904.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Motion of Complainant to Strike From the Files the Joint and Several Plea of Defendants Garrozi and Juana Maria Gonzalez Filed November 3rd, 1904.

Complainant respectfully pray for an order of Court striking from the files the joint and several plea of defendants Garrozi and Juana Maria Gonzalez filed November 3rd. 1904, and for grounds thereof show:

First. Defendants' said plea goes to the whole bill and is waived by the answer of defendants already filed by them, which goes to the whole bill.

Second, because the matter set forth in the said plea is and was included in the pleas previously filed by defendants and which have been overruled, by reason of which the said plea is *res judicata.*

Third. Because the said plea was and is properly a matter of defence to the original bill before amendment and the same has been waived by reason of the facts aforesaid, nor is it required or proper by reason of any matters introduced in the said bill of complaint by the amendment thereto—such amendment not affecting the right of complainant to recover by the law of Porto Rico, but only the extent of such recovery and the properties to which such recovery should apply in the event that complainant should be held to have a right to recover anything at all.

Fourth, because the matter of said plea is not in response to any

new matter introduced in the bill of complaint by the said amendment thereto.

Fifth, because the case has been tried and the testimony taken up to this date upon the same theory which defendants now pre-
87 sent by last plea.

F. H. DEXTER,
*Solicitor for Complainant.*

*Motion to Strike from the Files Answer to the Amended Bill.*

(Filed Nov. 11, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Motion to Strike from the Files Answer to the Amended Bill.

Now comes complainant and moves to strike from the files the answer of defendants to the amended bill herein for the reason that the same is improper and contrary to the rules and practice of the Court.

First. Because the amendment to the original bill was only a matter of form and did not effect or change in any respect the issues herein.

Second. Because the said answer does not set up any new fact or facts to meet said amendment.

Third. Because by the answer of defendants heretofore filed herein they have submitted and raised the same question and issues.

Fourth. Because the testimony taken and all proceedings had up to this date in this case have been taken and had upon the same theory as presented in said answer to the amended bill, and therefore no new or additional answer is necessary.

F. H. DEXTER,
*Solicitor for Complainant.*

*Order Referring Certain Pleadings and Matters to Special Master.*

(Filed Nov. 10, 1904.)

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Order Referring Certain Pleadings and Matters to Special Master

Now, on this seventh day of November, 1904, the parties hereto appear in open court in the City of San Juan, complainant by
88 her solicitor F. H. Dexter and defendants by their solicitor C. M. Boerman.

Thereupon, defendants by their said solicitor, call up their exceptions to the report of the Special Master overruling their plea filed herein on the 31st day of October, 1904, to the amended bill of complaint and also submit to the Court a further plea filed by them of the third day of November, 1904, to the said amended bill of complaint.

The Complainant, by her said solicitor, calls up her motion to confirm the said report of the Special Master and also her motion to strike from the files the said further plea of defendants filed on the said third day of November, 1904, and it further appearing to the Court that defendants have filed their answer herein to the amended bill if complaint on the third day of November, 1904;

It is now ordered that all of the foregoing motions, exceptions and pleadings be and they are hereby referred to the Special Master to take such action thereupon as may be proper in accordance with equity and the practice thereof, and to proceed as diligently as possible to speed said cause and to bring the same on a final decree.

Until a final decree is entered and reported herein by the said Special Master, all motions which may be filed in this cause shall be by the Clerk immediately referred to the said Special Master, excepti*on* such motions as by law or the rules of equity pray for orders which require to be made by the Court or the Judge thereof and excepting such motions as the Court or the Judge thereof may hereafter see fit to consider and determine.

CHAS. F. McKENNA, *Judge.*

O. K. (Signed) C. M. BOERMAN.
Approved. " F. H. DEXTER.

*Order of Master upon Motions and Exceptions.*

(Filed & Entered Nov. 14, 1904.)

In the United States District Court for Porto Rico.

89 In Equity.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

(Filed Nov. 14, 1904.)

This cause coming on for further hearing before the undersigned as Special Master in Chancery therein, under an order of the Court dated the 7th day of November, 1904, the undersigned, having heretofore as such Master reported upon the sufficiency of the plea filed by defendants herein on the 31st day of October last, does not feel himself empowered to dispose of the motion made by complainant to confirm the Master's report upon the plea aforesaid, or of the defend-

ant's exceptions to his said report, but hereby recom-ends to the court that said exceptions be overruled and the motion of complainant to confirm be sustained.

Said cause further coming on for hearing, under the order aforesaid upon the motion of complainant to strike from the files the plea filed herein on the 3rd day of November, 1904, defendants ask leave to withdraw said plea as a plea and that the same be allowed to stand as a part of the answer of defendants, to which asking the complainand agrees; and it — therefore so ordered.

Whereupon, counsel for complainant files a motion that the answer of defendants filed herein on the 3rd day of November, 1904, be striken from the files, and said motion is submitted under the order of reference aforesaid; whereupon after consideration it is ordered and adjudged that said motion be denied.

San Juan, Nov. 14, 1904.

N. B. K. PETTINGILL,
*Special Master in Chancery.*

*Order Allowing Filing of General Replication etc.*

(Filed Dec. 12, 1904.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

(Filed Dec. 12, 1904.)

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

**Order.**

90 Now, on this twelfth day of December, 1904, it appearing to the Judge of this Court that Complainant has not filed exceptions to the report of the Special Master overruling her motion to strike from the files the joint and several answer of defendants Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza filed herein on the 14th day of November, 1904, and that the said complainant does not desire to file exceptions thereto within the thirty days allowed by the Equity Rules, but desires to file her general replication to such answer, it is now ordered that such general replication be filed, and the same is now filed, there being no objection ther-to.

Defendants having called up and submitted to the Court their exceptions to the Report of the Master overruling their plea, the said exceptions are by the Court overruled, without prejudice to renewing said exceptions upon final hearing if Defendants should desire to do so.

Complainant's motion to confirm the said Report of the Master

overruling the plea of defendants is herewith sustained and said Report is hereby confirmed.

The entire cause is therefore referred to the Special Master who will proceed with as much diligence as possible to submit a final decree herein.

CHAS. F. McKENNA, *Judge.*

*Replications to Joint and Several Answer of Tomas Garrozi et al.*

(Filed December 12, 1904.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

JUANA DASTAS
*vs.*
TOMAS GARROZZI ET AL.

Replications to the Joint and Several Answers of Tomas Garrosi, Juana Maria Gonzalez, and Domingo Piazza.

This replicant, Juana Dastas, saving and reserving to herself all and all manner of advantages of exception which may be had
91 and *and* taken to the many*f*old errors, uncertainties, and insufficiencies of the joint and several answers of defendants Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza, for replication thereunto saith that she doth and will aver, maintain and prove her said bill to be true, certain and sufficient in law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true; all which matters and things this replicant is ready to aver, maintain and prove as this Honorable court shall direct and humbly prays as in and by her said bill she hath already prayed.

F. H. DEXTER,
*Solicitor for Complainant.*

*Stipulation of Attorneys.*

(Filed December 13, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZZI ET AL.

Stipulation of Attorneys.

It is hereby stipulated by and between the parties and their respective Solicitors:

First. That the depositions of Domingo Piazza heretofore taken on Commission issued by this Court and returned by the examiner to the Court, which have heretofore been striken from the testimony, be admitted as testimony at the hearing of this case, subject to objections of counsel as to materiality, relevancy or competency of the testimony.

Second. That all the testimony which heretofore has been taken before Special Examiner Harry P. Leake in this cause be admitted to be read at the hearing of the case, subject to objections which have been taken by counsel as to relevancy, materiality or compe-
92 tency of testimony of the witnesses.

Third. That no other testimony will be taken by defendants in this case except as to the value at different times of the properties and credits alleged in the last amended bill of complaint to have been transferred from Domingo Piazza to Juana Maria Gonzalez and the testimony of Juana Maria Gonzalez as to the consideration for such transfers, and that such testimony shall be taken by said Special Examiner Harry P. Leake in the city of Ponce upon proper notice to the parties, and concluded before January 8th, 1905.

Fourth. The complainant will not offer any further testimony except in rebuttal of the testimony mentioned in the last preceding paragraph, and the time for such rebuttal testimony is also limited to be taken on or before January 8th, 1905.

Fifth. And that after such testimony is in, the case shall be immediately thereafter submitted to the Special Master for final decree, said Special Master to notify counsel on both sides of the time fixed for argument and briefs.

December twelfth 1904.

F. H. DEXTER,
*Solicitor for Complainant.*
C. M. BOERMAN,
*Solicitor for Defendants.*

*Finding of Fact and Law by Special Master.*

(Filed April 8, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Report of the Special Master.

To the Honorable Charles F. McKenna, Judge of said Court:

The undersigned having been appointed by Your Honor by order dated 3rd of October 1904, Special Master in this cause, to rule upon the objections taken to testimony and other matters in controversy during the taking of said testimony before H. P. Leake Esq. as special examiner under appointment by this court, and also to report to the court findings of fact and conclusions of law upon
93 said testimony, and certain additional testimony taken after said appointment before the same special examiner and filed in this court on the 30th day of January 1905, having been also referred to me for consideration as such master, I beg leave to submit the following report.

Counsel for the respective parties have appeared before me at various hearings numbering twelve or fifteen in all, all the objections taken to the testimony have been duly ruled upon, all other matters additionally referred to me or properly coming before me have been considered; elaborated argument and briefs have also been submitted by counsel on both sides, and as thorough an examination as possible of the authorities submitted has been made. The testimony is very voluminous, and the theories advanced and insisted upon by counsel on the opposite sides have been so antagonistic that it has been difficult to extract from the evidence precise information on all points; but after the best consideration I have been able to give, I have found the following as the pertinent fact developed by the evidence:

1.

The complainant and defendant were married on the 12th day of May, 1886, without any express marriage contract or other circumstances which varied in any respect the application of the legal principles governing community property.

2.

The marital partnership beginning at the time of said marriage continued until said parties were divorced by the decree of the Supreme Court of Porto Rico on the 9th day of June, 1902.

3.

The complainant was about fifteen years old at the time of her

marriage; had been a servant in the house of her husband, and brought no property whatever to the marital patnership.

4.

The defendant was about forty six years old at the time of said marriage, and at that time was the owner of various prop-
94 erties, briefly described as follows:

(A.)

A coffee estate of nearly four hundred acres, known as the "Juanita," but subject to a contract of sale of the one half interest to one Pintado.

(B.)

A mortgage given by Francisco Lluveras for the principal sum of 9,000 "pesos commerciales" which was, at that time, practically equivalent to gold.

(C.)

A mortgage from Simon Fracicelli for the principal sum of 3269.79 pesos (Mexican).

(D.)

A mortgage given by the brothers Antongiorgi for the sum of $18,000.00 gold.

(E.)

Two houses in Yauco, valued at $2500.

5.

The defendant Garrozi, in his testimony claimed to have had $80,000 cash in gold just previous to his marriage, but there is no other credible testimony to substantiate this claim, and all the surrounding circumstances are against the probability of his possession of any such sum. According to Garrozi's own account, when he made the contract with Pintado touching The hacienda "Juanita" in 1881, he brought down from the estate when he came to live in Yauco about $40,000.00 and before that time he had only loaned out two small sums amounting to $3,000.00, and no other source of income is shown except what he may have received under his contract with Pintado, the amount of which is left entirely indefinite. The evidence further shows that the interest on the Lluveras mortgage was only partially paid, and the Antongiorgi mortgage was not purchased until a short time before his marriage. Considering this testimony in connection with the statement of the defendant Garrozi in his own testimony (see E. R., pages 94 & 109) the Master is forced to discredit Garrozi's statement as to the amount of $80,000
95 and that being discredited there is no evidence from which to find any cash assets at the time of the marriage.

6.

That in March 1887 defendant sold the Fraticelli mortgage for its face value.

7.

That in M*ya* 1887 defendant Garrozi sold the Antongiorgi mortgage for its face value.

8.

That in February 1889 defendant Garrozi loaned on a mortgage on the estate "Leonor" 23,680 pesos current money, which loan was afterwards reduced by payment of 17,300 pesos.

9.

That in the same year 1889 defendant Garrozi purchased the estate "Maria Antonia" from Gustavo Quintin Ramirez for the sum of $48,000.00 gold, with the right in the vendors to repurchase within a specified time at the same price.

10.

That in July 1890 defendant Garrozi loaned on a mortgage to Encarnacion Ramirez an amount which, inclusive of interest to July 1895, equal*l*ed $23,398.76 current money. Neither the documentary nor the oral evidence clearly discloses the actual amo-nt loaned at the time the mortgage was given, but as near as can be ascertained the Master concludes that it was approximat-ly equal to $10,000.00 gold.

11.

That in April 1891 defendant loaned on a mortgage to Mercedes Lluveras the sum of $10,470.36 current money.

12.

That in 1892 defendant Garrozi made a final liquidation with Pintado concerning the half interest in the hacienda "Juanita" which he had bargained to said Pintado in 1881, and acknowledged to have received the full sum of $42,000.00 current money, for which he had sold said half interest to Pintado.

96

13.

That in February 1893 defendant Garrozi sold the remaining half interest in the hacienda "Juanita" for the same amount, $42,000.00 current money, payable in seven instalments of $6,000 each, in April of each of the years 1893 to 1899 inclusive; but the evidence does not disclose at what times any of these instalments were actually paid.

14.

That in 1894 the original loan of 9,000 "pesos comerciales" made to Francisca Lluveras as stated in the finding numbered 4 (B) had, with interest and change in the unit value, grown to $20,774.78 current money, of which the then owner of the land paid to defendant Garrozi the sum of $5011.32 in reduction of the mortgage, and defendant Garrozi sold the remainder of the mortgage credit for the remainder of its face value, to wit: $15,763.46.

15.

That in June 1894 the defendant loaned the sum of $15,000 current money on the undivided one half interest of Tomas Olivari in the hacienda "Luisa," and in July of the same year he loaned the sum of $7,000 current money upon the other one hald interest of Adela Santoni in the same estate "Luisa."

16.

That defendant Garrozi brought suits in the District Court of Ponce for the foreclosure of his two mortgages on the said hacienda "Luisa" as a result of which said property was adjudicated to him by the decrees of the Court dated 4th and 19th of July 1900, and on the 1st day of August 1900 defendant Garrozi transferred his title to said "Luisa" which he had obtained in said foreclosure suites to Domingo Piazza, for a consideration as expressed in deeds of $7,200 for one undivided half and $6,000 for the other undivided half, which amounts the deeds of conveyance recited were left in the possession of said Piazza on account of an indebtedness there-
97 tofore existing from said defendant Garrozi to Piazza. The said Piazza afterwards, in the month of August 1902, transferred the same to defendant Juana Marai Gonzalez, for the expressed consideration of $10,000.

17.

That on the same 1st day of August 1900, the defendant Garrozi transferred to Domingo Piaaza the balance of the mortgage remaining due from Pintado on the estate "Juanita" referred to in finding numbered 13 above, then amounting to $7200 gold for the price of $4800 which the instrument of assignment recited was left in the hands of said Piazza in part payment of indebtedness from the defendant Garrozi; and on the 1st day of August 1902 said Piazza assigned said mortgage credit for a recited consideration of $4000 to the defendant Juana Maria Gonzalez in like manner as the property referred to in the previous finding was transferred.

18.

In December 1899 said defendant Garrozi transferred to defendant Juana Maria Gonzalez for the recited consideration of $6,000 cur-ent money, which was then provincial pesos, the two houses refered to in finding numbered 4 (E).

19.

The mortgage given by Mercedes Lluveras referred to in finding numbered 9 was on July 31st 1900 transferred by defendant Garrozi to said Domingo Piazza for a recited consideration of $6,282.22, which said Garrozi acknowledged to have received from Piazza, and on the same 1st day of August 1902 said Piazza assigned the same to defendant Juana Maria Gonzalez for a recited consideration

20.

On the same day of August 1st 1902 said Piazza transferred to

defendant Juana Marai Gonzalez, for a recited consideration of $10,000.00 acknowledged to have been received, the said hacienda "Luisa" referred to in findings numbered 15 and 16, to-
98 gether with another property consisting of (250) two hundred and fifty cuerdas called the "Hortensia," the two properties thus forming one hacienda of seven hundred and seventy five (775) cuerdas, under the name of "Luisa."

21.

On May 28, 1900, the defendant Garrozi transferred to defendant, Juana Maria Gonzalez, all his right and title to the plantation "Maria Antonia" referred to in finding numbered 9, for the recited consideration of $48,000.00, acknowledged to have been received, and on July 1st, 1901, said defendant Juana Maria Gonzalez, represented by the defendant Garrozi under a general power of attorney executed to him on May 28, 1900, transferred the same to Gustavo and Quintin Ramirez for the recited consideration of $48,081.18, the said transfer being made in pursuance to the right of repurchase, reserved by said Gustavo and Quintin Ramirez in the deed of sale which they made to the defendant Garrozi.

22.

That all the foregoing transfers described in findings numbered 16, 17, 18, 19, and 20 were made by the parties thereto without consideration with knowledge of whatever rights they complainant may be found to have in said properties as community property of the said marital partnership, and for the fraudulent purpose of defrauding said complainant out of whatever share she might have in said properties.

23.

That the $48,081.18 alleged to have been received by the defendant Juana Maria Gonzalez from the transfer of the plantation "Maria Antonia" was in fact received by the defendant Garrozi, who really acted in his own interest while pretending to represent the defendant Juana Maria Gonzalez as her attorney in fact; the interest of the said Juana Maria Gonzalez being at the time entirely fictitious; but that some part of said money was expended or reinvested by the defendant Garrozi in the acquirement of the plantation "Hortensia" and the improvements on the haciendas "Luisa" and "Leo-
99 nor" after their transfer into the name of Juana Maria Gonzalez.

The Master concludes therefore that the balance remaining in the hands of defendant Garrozi unexpended is approximately $15,000.00.

24.

That said defendant Garrozi made several trips to Europe during the continuance of his marital partnership, and spent large sums of money by reason thereof; which were as near as can be determined from his testimony, the following amounts:

| | |
|---|---|
| In 1889 | $10,000.00 |
| In 1890 | 7,000.00 |
| In 1895 | 5,000.00 |
| In 1896–98 | $25,000.00 |
| Total | $47,000.00 |

Said defendant claims in his testimony that these trips to Europe and the expenditure of these large sums of money was rendered necessary by reason of his serious and continued illness. But said testimony is not substantiated by that of any other credible witness, while if true if could have been easily proven by the testimony of some of the physicians who attended him, and who must have had full knowledge of his condition during these times. But even granting that the journeys were necessary to defendant's health, the Master is forced to the conclusion, either that said defendant has exaggerated the amounts expended, or that such extravagant expenditures were not either necessary or reasonable, and hence not a proper charge against the property of the marital partnership.

It seems that twenty-five thousand dollars would have been a liberal expenditure under the circumstances for a man in defendant Garrozi's condition of life, and the Master therefore concludes that twenty-two thousand dollars of the amount should be charged against the separate property of defendant Garrozi.

100

25.

The defendant Garrozi received in instalments from Pintado between the years 1893 to 1899 the sum of $30,000.00 provincial money, under the contract with Pintado referred to in finding numbered 12, but there is no evidence to show on what particular dates any specific parts of said sums were received.

26.

That the capital brought by defendant Garrozi to the marital partnership is therefore found to be as follows:

| | |
|---|---|
| 1. The hacienda "Juanita" which the Master concludes was then reasonably worth | $40,000.00 |
| 2. The mortgage from Francisca Lluveras, value | 9,000.00 |
| 3. The mortgage from Simon Fraticelli | 2,000.00 |
| 4. The mortgage from Antongiorgi | 18,000.00 |
| 5. The two houses and lot in Yauco | 2,500.00 |
| Total | $71,000.00 |

27.

That at the time of the dissolution of the said marital partnership, to wit; on the 9th day of June, 1902, the defendant Garrozi was possessed of the following property:

| | |
|---|---|
| 1. Two houses and a lot in Yauco valued at..... | $8,000.00 |
| 2. A mortgage credit from Mercedes Lluveras..... | 6,000.00 |
| 3. Mortgage credit from Encarnacion Ramirez..... | 10,000.00 |
| 4. The hacienda "Luisa"..... | 25,000.00 |
| 5. The hacienda "Leonor"..... | 15,000.00 |
| 6. Cash remainder from the sale of "Maria Antonia".. | 15,000.00 |
| Total ..... | $77,000.00 |

From the foregoing findings of fact the Master adduces following conclusions of law:

First. That notwithstanding the divorce of the wife of her adultery, she does not lose her right to share in the *g*inancial property, if there be any.

Civil Code, Secs. 73, 1433, 1435.

Second. That the value of the property of defendant Garrozi at the time of dissolution of the marital partnership being found to be of greater value than the property brought by him to said partnership, said partnership has some *ga*nancial assets to
101 be divided.

Third. That the liquidation of the accounts of the marital partnership must be made as of the date of the dissolution thereof and in making such liquidation there must be set apart from the assets of said partnership at said date of dissolution, the value of the property brought by each spouse to said partnership, after charging to the account of the husband whatever may have been wrongfully and fraudulently expended or disposed of by him as the administrator of the partnership funds.

Civil Code, sections, 1419, 1423.
Sentence of the Supreme Court of Spain Dec. 29, 1873
Jurisprudencia Civil, Vol. 29 p. 55.
Sentence Supreme Court of Spain October 14, 1865.
Sentence Supreme Court of Spain February 21, 1885.
Jurisprudencia Civil, Vol. 57 p. 267.
Sentence of Dec. 15, 1896, Vol. 80 p. 807.

Fourth. That in case at bar the complainant having brought no assets to the marital partnership, and the defendant Garrozi having brought property to the value of $71,500.00, and the total assets of the partnership at the date of its dissolution having been found to be $77,000.00, there would remain as the profits *od* said partnership the sum of $5,500.00 of which the complainant would be entitled to one half, or $2,750.00; but the defendant Garrozi having, as herein found wrongfully deprived the partnership of the sum of $22,000.00 the complainant will also be entitled to recover from the defendant Garrozi one half of this amount, or $11,000.00, making a total of $13,750.00 to which the complainant is entitled.

Fifth. That the conspiracy f*o*med between the defendants for the purpose of transferring the titles of said property held in the name of defendant Garrozi before any liquidation of the *ga*na-cial

profits of said partnership had been made for the purpose of defrauding the complainant of whatever rights she might have in the said property upon the liquidation of the said partnership, gives
102 the complainant a right to bring this suit and thereby to terminate the control of said defendant Garrozi over such interest in said property as complainant may have; notwithstanding the provisions of article of the Civil Code.

Sentence of the Supreme Court of Spain, May 8, 1900.
Jurisprudencia Civ-l, Vol. 89, p. 591.

Sixth. That the conveyances describes in findings of fact numbered from 18 to 22 inclusive, which are thereby found to be fraudulent as against the complainant should be decreed to be null and void, as against complainant's rights; and in case defendant Garrozi does not pay over to the complainant the amount hereby found to be due, to be cancelled upon the registry of property in so far as the same may be necessary to enable the complainant, by the sale of said property, or any part thereof, to obtain satisfaction and payment of her said decree.

All which is respectfully submitted, and the Master having hereby complied with the order of this Honorable Court in the premises, hereby prays that his report may be filed and considered by the Court, and that he may be allowed reasonable compensation for his services in this behalf, for which he asks the sum of five hundred dollars; together with the sum of twenty dollars for stenographic services in connection herewith.

N. B. K. PETTINGILL.
*Special Master.*

*Exceptions of Complainant to Report of Special Master.*

(Filed April 8, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Exceptions of Complainant to the Report of the Special Master.

Exceptions Taken by the Complainant to the Report Made Herein by N. B. K. Pettingill Appointed by Order of this Court on October 30, 1904, the Special Master in this Cause.

First. The complainant excepts to that part of the 23rd finding of fact wherein the Master computes that the balance re-
103 maining in the hands of the Defendant Garrozi unexpended is approximately Fifteen thousand dollars, (15,000.00), because it is not supported by the evidence and complainant is entitled to half of the Forty Eight thousand Eighty One Dollars and Eigh-

teen cents (48,081.18) shown to have been received by the defendant Garrozi from the transfer of the plantation Maria Antonia."

Second. The complainant further excepts to that part of the 24th finding of fact wherein the Master computed that only Twenty Two Thousand Dollars (22,000.00) of the amount of Forty Seven Thousand Dollars (47,000.00) claimed by the Defendant Garrozi to have been spent by him in his trips to Europe, because it is not justified by the evidence and it has not been shown that said amount was spent for the benefit of the conjugal partnership, and by the law of Porto Rico only expenditures for the benefit of the partnership can be charged to the same.

Third. Complainant excepts to the 26th finding of fact for the reason that the amount of Seventy One Thousand Dollars ($71,000.00) found by the Master to have been brought by defendant Garrozi to the marital partnership is excessive and not supported by the evidence, and, as Defendant Garrozi failed to make any reservation by deed in accordance with the law of the amount of property claimed to have been brought by him to the marital partnership, said properties having afterwards merged into the partnership fund, the same lost the character of individual property and he is prevented by law from claiming it as his own individual property.

Fourth. The complainant excepts to the 27th finding of fact wherein the Master finds that the defendant Garrozi, on the ninth day of June, 1902, was possessed of property to the value of Seventy Seven Thousand Dollars ($77,000.00), for the reason that said valuation is too low, contrary to the evidence and it fails to include the full amount of the proceeds of the sale of the plantation Maria Antonia" received by Garrozi.

Fifth. The complainant excepts to the 4th conclusion of law of the said Master because the same, being found on the 26th
104 and 27th finding- of facts excepted to by the complainant as not supported by the evidence in the case, and therefore has no application to this case.

Respectfully submitted.

F. H. DEXTER,
JOSÉ HERNANDEZ,
*Solicitors for Complainant.*

*Exceptions of Defendants to Master's Findings.*

(Filed April 8th, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Exceptions of Defendants to Master's Findings.

Now comes the defendant Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza and except to the findings of fact and conclu-

sions of law filed herein by the Hon. N. B. K. Pettingill, Special Master, in the following particulars, to wit:

First. To the fifth findings of fact in this, that the uncontradicted testimony of Tomas Garrozi corroborated by several other witnesses as to his possession of Eighty Thousand Dollars ($80,000.00) in cash at the time of his marriage, was totally disregarded and that the Master finds that there were not any cash assets at the time of the marriage, because this finding is contrary to the evidence.

Second. To the twenty-second finding of fact that the transfers described in findings sixteen, seventeen, eighteen, nineteen and twenty were made without consideration and for the purpose of defrauding the complainant of her share in the marriage community assets, on the ground that the evidence does not justify this finding of fact, as the transfers made by Tomas Garrozi to Juana Maria Gonzalez were for a good and valuable consideration to wit, her services and work in his behalf for a great length of time, and the transfers to Domingo Piazza have been testified to by all three of the defendants to have been made in good faith and for a valuable con-
105 sideration and there is no proof to the contrary.

Third. To the twenty-third finding of fact in that part of it where it says that the money received by defendant Juana Maria Gonzalez on the transfer of the plantation "Maria Antonia" was really received by defendant Garrozi and that the interest of said Juana Maria Gonzalez at that time was entirely fictitious, on the ground that the transfer made to her of said credit was for a good and valuable consideration, to wit, her work and services in behalf of the defendant Garrozi.

Fourth. To the twenty-fourth finding of fact, in which the Master finds that the money spent by defendant Garrozi during the whole time of his marriage for curing himself of a very grave sickness and making trips to Europe in that behalf, amounting during four trips in 1889, 1890, 1895 and 1896 up to 1898 while he was being treated in Europe for about two years, to the sum of Forty Seven Thousand Dollars ($47,000.00), was an excessive expense and therefore the Master finds that Twenty Two Thousand Dollars ($22,000.00) ought to be deducted therefrom. The exception is founded on the reason that the health of the head of a family is a most important matter to attend to and that a sickness lasting for twelve or fifteen years, necessitating great care, attendance of nurses, extraordinary expensive attendance of physicians in Europe, the expenses of the trips, expenses of hotels and other expenses for a disabled sick man, will warrant in the financial condition and position in which Tomas Garrozi was at that time, an expenditure of Forty-seven Thousand Dollars ($47,000.00), and upon the reason that at that time there was not and there could not be the least intention on the part of Tomas Garrozi to make any expenses in fraud of his wife inasmuch as at that time there was not the least disagreement between them and inasmuch as they were living peaceably and well up to the time of the adultery committed by the complainant, his wife, which happened after the year 1898 and after these trips had been made.

Fifth. To the twenty-seventh finding of fact, that is to say
106 to that part of it which finds that the value of the estate "Luisa" at the time of the divorce in 1902 was Twenty Five Thousand Dollars ($25,000.00) and that the value of the estate "Leonor" was Fifteen Thousand Dollars ($15,000.00), as not warranted by the evidence in the case, competent and expert witnesses having testified that the first one is worth about Fifteen Thousand Dollars ($15,000.00) and the second one about Twelfe Thousand Dollars ($12,000.00).

Sixth. The defendants further except to the first conclusion of law that, notwithstanding the divorce of the wife for adultery, she has a right to share in the community property assets, as not warranted by the law.

Seventh. To the fourth conclusion of law finding that the complainant is entitled to the sum of Thirteen Thousand Seven Hundred and Fifty Dollars ($13,750.00). The exception is founded on the following grounds:

1. That the evidence does not show any profits of the marriage society partnership at all, and

2. Because there is wrongfully charged against the defendant Garrozi the sum of Twenty Two thousand Dollars ($22,000.00), which he has spent many years ago for the purpose of curing himself of a grave and dangerous disease, such expense being a necessary expense and not made with any fraudulent intent, and therefore the charge thereof against him in the marriage society partnership liquidation is not warranted either by law or in equity.

Eighth. To the fifth conclusion of law that the complainant has a right to terminate the control of the defendant Garrozi over such interest in the marriage society property as the complainant may have, as not warranted either by the facts of the case or by the law.

Ninth. To the sixth conclusion of law finding the conveyances described in findings of fact numbered from eighteen to twenty-two inclusive, should be decreed to be null and void and that a decree
107 should be entered in conformity thereto, on the ground that such findings and conclusions of law are not warranted either by the fact proven in this case or by the law.

Tenth. The defendants except to the refusal of the master to find as a conclusion of law, as requested by the defendants, that the complainant is not entitled to any share in any marriage society profits on the ground of her adultery and the decree of divorce granted therefor to the defendant Garrozi.

Eleventh. Defendants except to the refusal of the Master to find as a conclusion of law, as requested by defendants, that the husband always remain the administrator of any property of his wife, including the marriage society assets, in case a divorce is granted to him on the ground of her adultery.

Twelfth. Defendants further except to the refusal of the Master to find as a conclusion of law, as requested by the defendants that there having been no marriage society assets at the time of the divorce no fraud can be presumed by any transfers or donations made

by the husband: Whatever transfers or donations he may have made, they were his own property and not of property any share of which belonged to the complainant.

Thirteenth. Defendants further except to the refusal of the Master to find, as requested by the defendants, as a conclusion of law that no fraud will be presumed and that, unless there is proof of fraud, transactions between parties will be considered as made in good faith.

Respectfully submitted.

C. M. BOERMAN,
*Solicitor for Defendants.*

*Entry Overruling Exceptions of Complainant and Defendants Respectively.*

(April 17, 1905.)

JUANA DASTAS
*vs.*
TOMAS GARROZZI ET AL.

The exceptions of the complainant and defendants respectively to the report of the Special Master upon his findings of law and fact in this case are overruled, the report of said Master is confirmed, and a decree will be entered in accordance herewith.

108 Thereupon the complainant calls up her motion for allowance of attorney's fees and files her affidavit in support thereof.

*Final Decree.*

(April 19th, 1905.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Final Decree.

yes

This cause came on to be heard on this 19th day of April, 1905, at the regular April Term of this Court held in the City of San Juan, upon the application of comp-ainant by her Solicitors F. H. Dexter and José Hernandez for a final decree, and the Court having considered the report of the Special Master N. B. K. Pettingill and having considered the exceptions to the same filed respectively by complainant and by defendants, and having overruled the said exceptions respectively and having approved the report of the said Special Master, the following decree is entered, to wit:

I. The Court finds, orders and decrees that there is due to complainant Juana Dastas by defendant Tomas Garrozi y Pietri, from and by reason of the conjugal society or partnership existing between the said complainant and the said defendant Tomas Garrozi during the existence of the marriage between them since the 12th of May, 1886 until the date of the divorce between them on the 9th day of June, 1902, the sum of Thirteen Thousand Seven Hundred and Fifty Dollars (13,750.00), which said sum is a charge and lien against the properties and mortgages herein-after described.

II. The Court finds, orders and decrees that the transfers and attempted sales, as hereinafter set forth, of the properties mortgages hereinafter described, are fraudulent, simulated and void as against complainant; such attempted sales and transfers being as follows, to wit:

(*a.*) The transfer and sale executed by defendant Tomas
109 Garrozi to defendant Juana Maria Gonzalez on the 26th day of December, 1899, before the Notary José R. Nazario de Figueroa of San German, of the two masonry houses located in Borinquen Street of the Municipal-y of Yauco, recorded in the Municapal Registry under the respective numbers 40 and 42, as set forth in the bill of complaint.

(*b.*) Also the conveyance and transfer by defendant Tomas Garrozi to defendant Juana Maria Gonzalez, on the 25th day of May, 1900, before the Notary Manuel Solis, Notary Public of Yauco, Porto Rico, of the mortgage indebtedness of 80,135 pesos 31 centavos represented by *pacto de retro* or conditional sale executed by Gustavo and Quintin Ramirez for the sum of 80,135 pesos, 31 centavos upon the property known as Maria Antonia," as described in said bill of complaint.

(*c.*) Also the sale by the defendant Tomas Garrozi to defendant Domingo Piazza, by the notarial documents of the first and fourth days of August, 1900, before Manuel Solis, Notary Public of Yauco, Porto Rico, of the coffee plantation "Luisa" located in the barrio of Ranchers in the Municipality of Yauco, as also the transfer of the said coffee plantation by defendant Domingo Piazza on the first day of August, 1902, to defendant Juana Maria Gonzalez, as described in said bill of complaint.

(*d.*) Also the assignment and transfer by defendant Tomas Garrozi to defendant Domingo Piazza, on the 2nd day of August, 1900, of the mortgage credit upon the coffee plantation "Leonor" described in subdivision D of the amended bill of complaint, and also the transfer and assignment of the said plantation "Leonor," by the defendant Domingo Piazza to defendant Juana Maria Gonzalez by the deed of conveyance of August 1, 1902, as described in said bill of complaint. And the Court orders and decrees that the title to the said estate "Leonor" which was attempted to be acquired by defendant Piazza in the foreclosure proceedings described in the bill of complaint shall be and is declared to be vested in defendant Garrozi, subject to the trust in favor of complainant as herein stated.

(*e.*) Also the transfer and assignment by defendant Tomas
110 Garrozi to defendant Domingo Piazza, by the Notarial document executed on the 1st day of August, 1900, before the

Notary public Manuel Solis of Yauco, of the mortgage credit of Twelve Thousand pesos remaining upon the coffee plantation "Juanita," in the barrio of Aguas Blancs Municipality of Yauco, ans also the transfer and assignment of the said mortgage credit last above named, by the defendant Domingo Piazza to the defendant Juana Maria Gonzalez, by the document of August 1, 1902, as described in said bill of complaint.

(*f.*) Also the transfer and assignment by the defendant Tomas Garrozi to defendant Domingo Piazza, by notarial document before the Notary Rafael Leon of Ponce, On the 31st day of July, 1900, of the mortgage credit of 10,470 pesos 36 centavos upon the coffee plantation Mercedes" composed of three parts or parcels of land two of said parts or parcels being located in the barrio of Pasto, Municipality of Guayanilla, and the other part or parcel being located in the barrio of Aguas Blancas, Municipality of Yauco. Also the transfer and assignment of the said mortgage credit by defendant Domingo Piazza, on the 1st day of August, 1902, to defendant Juana Maria Gonzalez, as described in said bill of complaint.

III. And the Court finds, orders and decrees that all of the transfers above set forth, so made as aforesaid by defendants Tomas Garrozi and Domingo Piazza, were and are fraudulent, simulated and void and for the purpose of defrauding complainant in her just demands.

IV. And the Court finds, orders and decrees that the said properties and mortgage credits now really belong to defendant Tomas Garrozi, who holds the same in trust for the payment to complainant of the sum of Thirteen Thousand Seven Hundred and Fifty Dollars ($13,750), and other costs and expenses herein found or to be found due in favor of complainant or in favor of this Court.

V. And the Court finds, orders and decrees that all of the said conveyances and assignments hereinbefore set forth be, and they are hereby cancelled, set aside and for naught held, and defendant Tomas Garrozi is held and declared to be the owner of the said properties, subject to the rights of complainant herein, as herein
111 above set forth, and that as to the amount herein found to be due to complainant, together with all costs, interests and charges in this decree or in these proceedings allowed, the said properties and mortgage credits shall be charged with a lien for the payment thereof.

VI. And the Court finds, orders and decrees that there is due to complainant the sum of Thirteen Thousand Seven Hundred and Fifty Dollars ($13,750.00) with interest thereon at six per cent per annum from the ninth day of June, 1902, the date of the decree of divorce between complainant and defendant Tomas Garrozi; the sum of Five Hundred Dollars ($500.00) which the Court hereby allows to the Special Master N. B. K. Pettingill, also the sum of Four Hundred Dollars ($400.00) which the Court hereby allows to the Special Examiner H. P. Leake, Esq. for reporting testimony herein, also all Court costs herein chargeable against defendant Garrozi and the Court hereby finds, orders and decrees that all costs in this case shall be paid by defendant Tomas Garrozi.

VII. It is provided, ordered and decreed by the Court that all of the foregoing amounts shall be paid by defendant Tomas Garrozi, for which complainant shall have execution in aid of this decree upon any other property of defendant which may be found subject to execution, other than the properties and mortgage credits hereinbefore described, but the said properties and mortgage credits shall be first offered for sale by the Master hereinafter appointed, and a sale of so much thereof will be hand by the said Master, under the rules and practice of this Court, as may be necessary to realize sufficient to fully discharge and pay all the sums allowed by this decree, together with interest and costs.

VIII. It is further *r*povided, ordered and decreed that the Registrars of Property of the District within which the properties and mortgage credits herein described are registered, shall note in their respective registries, in the manner provided for by law, this decree and the cancellation and annulment of the transfers and assignments herein above described. And it is further ordered
112 and decreed that complainant shall have execution against defen*d*dant and all property belonging to him for the recovery of all amounts authorized by this decree.

IX. The receiver appointed herein is hereby authorized and directed to make immediate report of all accounts in connection with the administration of the properties herein before described and to return to the registry of this Court all sums of money now in hand and all of said sums shall be subject to the payment, as far as possible, of the amounts by this decree allowed.

The Court hereby appoints H. P. Leake, Esq; as Special Master for the sale of the properties and mortgage credits above described if the same should be necessary for the payment of the sums herein allowed.

The Court reserves the right to make such other and further order herein as *amy* be necessary to carry out the terms and purposes of this decree.

CHAS. F. McKENNA, *Judge.*

*Order Awarding an Allowance to Complainant for Expenses of Litigation and to Apply on Counsel Fees.*

(Filed April 20th, 1905)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Order Awarding an Allowance to Complainant for Expenses of Litigation and to Apply on Counsel Fees.

Now, on this 20th day of April, 1905, at a session of this Court held in the City of San Juan, at the April Term, 1905, thereof, the following order was made and entered:

The motion of Complainant heretofore filed for an order awarding her payment of the alimony heretofore granted to her in the District Court of Ponce, and also a reasonable sum to pay on account of legal expenses and Attorney's fees in connection with
113 this suit, having been heretofore presented to this Court by Complainant's Solicitors and the same having been argued by Solicitors for Complainant and for Defendants respectively, and briefs having been filed by the respective Solicitors for and against the same, and the Court having fully considered the premises and having considered the allegations of the pleadings in the case with reference to the allowance of the sums hereinafter mentioned, by the District Court of Ponce, to Complainant, and having considered the amount of Counsel fees hereinafter specified to be reasonable,

It therefore orders that Defendant Tomas Garrozi shall pay to Complainant Juana Dastas and to her Solicitor F. H. Dexter the following sums to wit:

| | |
|---|---|
| The amount awarded to *by* her by the District Court of Ponce as expenses of litigation | $598.00 |
| Interest thereon at six per cent. per annum from A-gust 7, 1901, to date | 133.50 |
| Alimony awarded by the District Court of Ponce, July 15, 1901, at $75 per month computed to the date of the decree of divorce, July 9, 1902 | 885.00 |
| Solicitor's fees to apply on account of legal services rendered by F. H. Dexter, Complainant's Solicitor | 1,500.00 |
| | $3,116.50 |

The Court further orders that the said amounts shall be paid by the Receiver out of any available funds in his hands, and if there be not sufficient funds in the hands of the Receiver to pay the same, Complainant shall have execution for the collection thereof.

The Court denies the application of Complai-ant for the allowance of $75 per month computed to the present time for the reason that Complainant's right to the liquidation and to her participation in the conjugal property is computed only to the date of the decree of divorce, July 9, 1902.

CHAS. F. McKENNA, *Judge.*

114 *Motion for an Extension of Time to File Bill of Exceptions.*

(Filed April 24th, 1905.)

United States District Court for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROSSI ET AL.

Now come the defendants herein by their Solicitor Chas. M. Boerman and pray this Honorable Court, that in view of the voluminous

pleadings, rules and testimony and exceptions thereto in the above entitled cause, the time to make and file a bill of exceptions and the statement of facts and ruling and the exceptions thereto, as required by the Statute in such cases, be extended to ninety days counting from the entry of the decree herein.

C. M. BOERMAN,
*Solicitor for Defendants.*

*Entry.*

(April 27th, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Upon motion of C. M. Boerman, solicitor for the defendants herein, the amount of the supersedeas bond is fixed at $25,000.00.

*Entry.*

(April 29th, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

The defendants herein are given until June 12, 1905, to present and file a bill of exceptions.

*Petition for Appeal.*

(Filed May 1st, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
115 TOMAS GARROZI, JUANA MARIA GONZALEZ, and DOMINGO PIAZZA.

The defendants herein, Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza, feeling themselves aggrieved by the final decree made by this Court on the 19th day of April, 1905, whereby it was adjudged and decreed that the defendant Tomas Garrozi pay over to the complainant the amount of thirteen thousand seven hun-

dred and fifty dollars ($13,750), and also providing for other things and matters in favor of the complainant and against the defendants, and by the supplemental order to said decree made on the 20th day of April, 1905, whereby it is ordered that the complainant recover the amount of three thousand one hundred and sixteen dollars ($3,116) for her alimony, expenses of litigation and solicitors' fees, with interest thereon, do hereby appeal from the said order and decree for the reasons specified in the assignment of errors filed herein, and they pray that this appeal may be allowed and that a statement of the facts of the case in the nature of a special verdict and of the rulings of the Court and the admission or rejection of the evidence when excepted to, shall be made and certified to by this Court and transmitted to the Supreme Court of the United States, together with the transcript of the record, papers and proceedings upon which said order and decree were made, and of said order and decree duly authenticated; and that upon the giving of security by the defendants to the amount fixed by this Honorable Court, all further proceedings in this Court be suspended and stayed until the determination of said appeal by the Supreme Court of the United States.

And your petitioners will ever pray.

C. M. BOERMAN,
*Solicitor for Defendants.*

*Assignment of Errors.*

(Filed May 1st, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI, JUANA MARIA GONZALEZ and DOMINGO PIAZZA.

116 Assignment of Errors.

Come now the respondents and file the following assignment of errors, upon which they and each of them will rely their prosecution of the appeal from the decree and order of this Honorable Court in the above entitled cause:

I.

That the United States District Court in and for the District of Porto Rico erred in entering a judgment and decree in favor of the complainant as against the defendants, contrary to the law and evidence of the case.

II.

That the said Court erred in not dismissing the bill of complaint and in not entering a judgment in favor of the defendants.

III.

That the said Court erred in entering a decree for a certain specified sum of money to wit, thirteen thousand seven hundred and fifty dollars ($13,750), while, under the law, upon the liquidation of the marriage community property only an aliquot part may be assigned to the spouses in what remains after having deducted the capital brought by each one of them to the marriage.

IV.

That said Court erred in allowing alimony, suit money and counsel's fees in a case which, under the amendments of the bill, is brought by a woman who has already been divorced from her husband on account of her adultery and is no more under his *patria*

V.

That said Court erred in overruling the plea of the defendants to the bill of complaint, as the bill of complaint was filed while the complainant was still the legal wife of the defendant Tomas Garrozi, and she then had no right in law to sue for a division of the mar-

VI.

That the said Court erred in allowing complainant to file an amendment to her bill of complaint, alleging that she was di-
117 vorced, after the divorce was granted her husband on the ground of her adultery, because that is a matter of supplemental bill and not of an amendment.

VII.

That the said Court erred in allowing another amended bill of complaint to be filed after the case was ready for final hearing and evidence had been taken, and putting in such amended bill of complaint matters which occur-ed after the filing of the original bill of complaint, because such matters are a subject for a supplemental bill and not for an amended bill of complaint.

VIII.

That said Court erred in overruling the plea of the defendant to the amended bill of complaint, that under the law of Porto Rico a woman who has been divorced from her husband on account of her adultery, has no right to a division of the marriage society assets.

IX.

That said Court erred in decreeing and ordering that the complainant should recover alimony which she was granted, *pendente lite* during the application for divorce by her husband, by another Court and which was not the subject matter of this suit at all.

X.

That the said Court erred in allowing the complainant suit money or expenses of litigation in a suit which, under the amended bills of complaint, she has instituted and could only institute under the law as a divorced woman and not as a married woman because as a married woman she had no right of action at all for the division of the marriage community assets.

XI.

That the said Court erred in allowing fifteen hundred dollars ($1500) as counsel fee to complainant's counsel in a suit which under the amended bill of complaint, she instituted, being already a divorced woman and not a married woman or under the *patria potestas* of her husband.

XII.

118 That the said Court erred in sustaining the objection of the complainant to the question by defendants' counsel on cross-examination, which was as follows: "So them it was not by judging the amount of the crop that you gave the value and it was not by the extent of the land? Your estimate then, was based simply on what other people said?", to which ruling the defendants

XIII.

That the said Court erred in not granting the motion of the defendants to strike out all the testimony of the witness Juan Macini Pietri referring to the plantation- "Leonor" and "Luisa," as being simple hearsay, after the witness had given the following answers to defendants' questions: Q. "You have testified something about the plantations "Luisa" and Leonor." What do you know about these farms?" Ans. "I have testified that the plantation "Luisa" produces a yearly average of 500 quintales, and the plantation "Leonor" about 300 quintales." Q. "How do you know that? Have you been managing these plantations?" Ans. "I Know it by what is said." Q. "That is all you know about it?" Ans. "Yes." To which ruling the defendants excepted.

XIV.

That said Court erred in overruling defendants' objection to the question by complainant's counsel as follows: "What is the value of the plantation- "Luisa" and Hortensia" today (1904)?" on the ground that it is too remote in time, the divorce having been granted in 1902 and liquidation, under the law, must be made as of the date of the divorce, to which the defendant- excepted.

XV.

That the said Court erred in overruling the objection of defendants to the question: "What was the value of the plantation "Juanita"

before he was married in 1886?" on the ground that the witness testifying had not qualified as an expert, to which defendants excepted.

XVI.

That the said Court erred in overruling the objection of defendants to the question: "How wealthy is he today?" (meaning Garrozi) on the ground that it calls for an opinion and that the Court erred in overruling the motion to strike the answer to the same question as an opinion, to which the defendants excepted.

XVII.

That the said Court erred in sustaining the objection to defendants' question on cross examination as follows: "When you said that the "Luisa" belongs to Tomas Garrozi are you willing to swear that it is regi*s*tered in his name?" to which ruling defendants excepted.

XVIII.

That the said Court erred in overruling the objection of defendants to the question of complainant: "What was this plantation worth before his marriage?" on the ground that the witness Gustavo Nin had not qualified as an expert, to which ruling the defendants excepted.

XIX.

That the said Court erred in overruling the defendants motion to strike out this witness Nin's testimony as to valuation after he gave to the question: "You base your calculation on the price you heard Mr. Pintade paid for it, do you?, the following answer: "Yes. He gave it to Pintade in liquidation for forty five thousand "pesos," to which ruling the defendants excepted.

XX.

That the said Court erred in overruling the defendants' objection to the question asked of witness Manuel Catala Dueña by the complainant, to wit, "What was the valuation of the plantation Juanita from the year 1881 to 1885?" on the ground that the witness had not qualified as an expert, to which ruling the defendants excepted.

XXI.

That the said Court erred in overruling the objection of the defendants to complainant's question put to the same witness, to wit, "What was the valuation of the plantation Juanita in cash at that time?" on the ground that the witness had not qualified as an expert, to which ruling the defendants excepted.

XXII.

That the said Court erred in overruling the objection of the defendants to complainant's question put to the same witness, to wit, "What was the value of the cock-pit?" to which ruling the defendants excepted.

XXIII.

That the said Court erred in overruling the defendants' objection to complaina-t's question put to the same witness, to wit, "What was the value of the other wooden house that he had?", also on the ground that the witness had not qualified as an expert, to which ruling the defendants excepted.

XXIIII.

That said Court erred in overruling the objection of defendants to complainant's question put to the same witness, to wit, "What was the value of the two other masonry houses?", on the ground that the witness had not qualified as an expert, to which ruling the defendant- excepted.

XXV.

That the said Court erred in overruling the objection of defendants to complainant's question put to the same witness, to wit, "What was the value of the other property he had?", (meaning Garrozi), to which ruling the defendants excepted.

XXVI.

That the said Court erred in overruling the motion of defendants to strike out the answer of the same witness to the question of the complainant, "How much in cash?" (meaning Garrozi). Ans. "As proceeding from the "Juanita" he should have $28,000," on the ground that this is a personal opinion of the witness, to which ruling the defendants excepted.

XXVII.

That the said Court erred in overruling the objection of the defendants to complainant's question, to wit, "What is the title of the collection entered in 1897?"; also in overruling the objection of defendants to the questions of complainants: "What other collections were made in that year?"; "Of what items is this collection of 6000 made up?"; "What is the character of that entry of $6000 pesos?"; "Please refer to the other collection of 1000 pesos?", On the
121 ground that they are all too remote from the time, either of the marriage or of the divorce, to which ruling the defendants excepted.

XXVIII.

That the said Court erred in overruling the objection of defendants to the questions of complainant, to wit "Referring to the year 1898, What amount did you credit Garrozi?"; What payments did — make to Garrozi in the year 1898"; "And what amounts of money have you taken in or collected for him?"; "And in 1889 What collection did you make?", as being too remote in time from either the marriage or the divorce, to which ruling the defendants excepted.

XXIX.

That the said Court erred in overruling the objection of the defendants to the question of complainants, to wit, "What is the *title* of the amounts credited by you to Garrozi in 1903?", on the ground that it was too remote and after the divorce was granted and also to the question of complainant, "What amount did he take in provisions in 1903?", on the same ground, to which rulings the defendants excepted.

XXX.

That the said Court erred in overruling the objection of defendants to the question, "What was the value of the hacienda "Juanita" in the year 1880?"; and also to the question, "How many quintals did the hacienda "Juanita" produce about the year 1880 and from thence to 1886?", to which rulings the defendants excepted.

XXXI.

That the said Court erred in overruling the objection of defendants to the question, "Has Tomas Garrozi increased his wealth since the marriage in 1886?", on the ground that it calls for an opinion of the witness to which ruling the defendant excepted.

XXXII.

That the said Court erred in not admitting in evidence the birth certificate of Juana Maria Gonzalez marked "Exhibit" for the defendants to which ruling the defendants excepted.

122 XXXIII.

That the said Court erred in overruling defendants' demurrer to the evidence of the complainant to which ruling defendants excepted.

XXXIV.

That the said Court erred in sustaining the objection of complainants to defendants' question put to Garrozi as follows: "When you got married to Juana Dastas did she bring in any marriage portion to the matrimony—any property?"; and also to the question put to the same witness "During your marriage with her did she inherit*ed* any property from any one?"; and also to the question; did she receive any gifts from any other person except your-self?", to which ruling the defendants excepted.

XXXV.

That the said Court erred in sustaining the objection of the complainant to the introduction of the document marked Exhibit HHH for the defendant, to which defendants excepted.

XXXVI.

That the said Court erred in sustaining the objection of the complainant to defendants' question put to the witness Francisco Pavoli as follows: "Were you present in the—1886 at any such inventory?" (referring to inventory made by Garrozi of his property at the time of his marriage to which ruling defendants excepted.

XXXVII.

That the said Court erred in sustaining the motion of complainant to strike out the answer to the following question "Did you count the money?", which answer was: No, sir; Luis Garcia counted it. They were counting it on the table and when they had finished counting it they made a note of it and it amounted to 80,000 pesos. "And also the following answer to the question, "So what you know about that amount is what you have heard Garrozi say about it, Is it?", Whis answer was "Yes, and I also saw the money on the table, and as they counted it I heard them and they stated the amounts until they reached the sum of 80,000 pesos, and it was in gold
123 money," to which ruling the defendants excepted.

XXXVIII.

That the said Court erred in granting the motion of complainant to strike out the testimony of this witness Francisco Pavoli, except as to persons present, to which ruling the defendants excepted.

XXXIX.

That the said Court erred in granting the motion to strike out the testimony of this witness Pavoli or his answers to the two following questions: Q. "Did you see the whole inventory?" Ans. "I saw when the inventory amounted to sum 200,000 pesos and then I retired." Q. "How did you know it was for that sum?" Ans. "Because I heard them saying '80,000 dollars in gold:, 90,000 dollars in property; various mortgages and other credits," to which rulings the defendant excepted.

XXXX.

That the said Court erred in overruling the defendant's objection to the introduction of certificate of the Registrar of Property Marked Exhibit for the complainant to which ruling the defendants excepted.

XXXXI.

That the said Court erred in taking jurisdiction of this suit be removal from an Insular Court of Porto Rico, to wit, the District Court of Ponce, because this United States District Court for Porto Rico has no jurisdiction in this case and no power to remove it, as

one of the parties defendant to wit: Juana Maria Gonzalez, is a citizen of Porto Rico and the controversy by its nature is not a separable controversy, the allegation of the complaint being that a joint fraud was committed by all the three defendants together against the complainant; and also on the ground that a separable controversy can only be removed to the United States Court when a suit is pending between citizens of different states and not between aliens.

124 XXXXII.

That the said Court erred in confirming the Master's final report in this case.

XXXXIII.

That the said Court erred in overruling the exceptions of defendants to the fifth finding of fact, in this, that the uncontradicted testimony of Tomas Garrozi corroborated by several other witnesses as to his possession of Eighty Thousand Dollars ($80,000) in cash at the time of his marriage was totally disregarded and that the Court finds that there were not any cash assets at the time of the marriage, because this finding is contrary to the evidence.

XXXXVI.

That the said Court erred in overruling the exception of defendants to the twenty fourth finding of fact, in which the Master finds that the money spent by defendant Garrozi during the whole time of his marriage for curing himself of a very grave sickness and making trips to Europe in that behalf, amounting, during four trips in 1889, 1890, 1895 and in 1896 up to 1898 while he was *been* treated in Europe for about two years, to the sum of Forty Seven Thousand Dollars ($47,000), was an excessive expense and therefore the Master finds that Twenty Two Thousand Dollars ($22,000) ought to be deducted therefrom. The exception is found on the reason that the health of the head of a family is a most important matter to attend to and that a sickness lasting for twelve to fifteen years, necessitating great care attendance of nurses extraordinary expenses attendance of physicians in Europe, the expenses of the trip expenses of hotels and other expenses for a disabled sick man will warrant in the financial condition and position in which Tomas Garrozi was at that time an expenditure of Forty Seven Thousand Dollars ($47,000), and upon the reason that at that time there was not and there could not be the least intention of the part of Tomas Garrozi to make any expenses in fraud of his wife, inasmuch as at that time there was not the least disagreement between them and
125 inasmuch as they were living peaceably and well up to the time of the adultery committed by the complainant, his wife, which happened after the year 1898 and after these trips had been made.

XXXXVII.

That the said Court erred in overruling the exception of defendants to the twenty seventh finding of fact, that is to say, to that part of it which finds that the value of the estate "Luisa" at the time of the divorce in 1902 was twenty five thousand dollars (25,000) and that the value of the estate "Leonor" was fifteen thousand dollars (15,000), as not warranted by the evidence in the case, competent and expert witnesses having testified that the first one is worth about fifteen thousand dollars (15,000) and the second one about twelve thousand dollars (12,000).

XXXXVIII.

That the said Court erred in overruling the exception of defendants to the first conclusion of law, that, notwithstanding the divorce of the wife for adultery, she has a right to share in the community property assets, as not warranted by law.

XXXXIX.

That the said Court erred in overruling the exception of defendants to the fourth sonclusion of law, finding that the complainant is entitled to the sum of thirteen thousand seven hundred and fifty dollars ($13,750). The exception is founded on the following grounds:

1. That the evidence does not show any profits of the marriage society partnership at all, and

2. Because there is wrongfully charged against the defendant Garrozi the sum of twenty two thousand dollars ($22,000) which he has spent many years ago for the purpose of curing himself of a grave and dangerous desease, such expense being a necessary expense and not made with any fraudulent intent, and therefore the charge thereof against him in the marriage society partnership liquidation is not warranted either by law or in equity.

XXXXX.

That the Court erred in overruling the exception of defendants to the fifth conclusion of law that the complainant has a right
126 to terminate the control of the defendant Garrozi over such interest in the marriage society property as the complainant may have, as not warranted either by the facts of the case or by the law.

XXXXXII.

That the said Court erred in overruling the exception of defendants to the refusal of the Master to find as a conclusion of law, as requested by the defendants, that the complainant is not entitled to any share in any marriage society profits on the ground of her adultery and the decree of divorce granted therefor to the defendants Garrozi.

XXXXXIII.

That the said Court erred in overruling the exception of the defendants to the refusal of the Master to find as a conclusion of law, as requested by defendants, that the husband always remains the administrator of any property of his wife, including the marriage society assets, in case a divorce is granted to him on the ground of her adultery.

XXXXXIV.

That the said Court erred in overruling the exception of defendants to the refusal of the Master to find as a conclusion of law, as requested by the defendants, that there having been no marriage society assets at the time of the divorce, no fraud can be presumed by any transfers or donations made by the husband. Whatever transfers or donations he may have made, they were his own property and not of property any share of which belonged to the complainant.

XXXXXV.

That the said Court erred in overruling the exception of defendants to the refusal of the Court to find, as requested by the defendants, as a conclusion of law that no fraud will be presumed and that, unless there is proof of fraud, transactions between parties will be considered as made in good faith.

XXXXXVI.

That the said Court erred in holding that in case of divorce on the ground of adultery of the wife, she can take away the
127 administration of her property from the hands of her husband on the ground of any fraud committed by the husband during the period of the marriage.

Wherefore the said Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza, plaintiffs in error, pray that the judgment, order and decree of the United States District Court for Porto Rico be reversed.

C. M. BOERMAN,
*Solicitor for Plaintiffs in Error, Defendants in Lower Court.*

*Order Allowing Appeal.*

(Filed May 23rd as of May 1st, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Order Allowing Appeal.

On motion of Chas. M. Boerman, Esq., solicitor for defendants and upon filing a petition for an appeal and an assignment of errors, it is ordered that an appeal be, and hereby is, allowed to have reviewed *to* the Supreme Court of the United States the decree and supplemental order heretofore entered herein, and that the amount of the bond of appellants herein be, and the same hereby is fixed at twenty five thousand dollars ($25,000), and that the same bond when filed and approved by the Court shall have the effect of a supersedeas.

Dated May 23rd, 1905 as of May 1st 1905 *nunc pro tunc.*

CHAS. F. McKENNA, *Judge.*

*Bond on Appeal.*

(Filed May 20th, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI, JUANA MARIA GONZALEZ, and DOMINGO PIAZZA.

Bond on Appeal.

-now all men by these presents, that we, Tomas Garrozi,
128 Juana Maria Gonzalez and Domingo Piazza, as principals, and Juan Castañer and Juan Cortada as sureties, are jointly and severally held and firmly bound unto the above named Juana Dastas in the sum of twenty-five thousand dollars ($25,000) lawful money of the United States of America, to be paid to the said Juana Dastas, her executors, administrators or assigns, for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 20th day of May, in the year of our Lord one thousand nine hundred and five.

Whereas lately at a session of the United States District Court for

Porto Rico, in a suit pending in said Court between the said Juana Dastas, complainant, and Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza, respondents, a decree dated the 19th day of April, 1905, *were* rendered against the said Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza, and the said Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza having obtained from said Court an order allowing an appeal to the United States Supreme Court to reverse the decree and order of the aforesaid suit, and a citation directed to the said Juana Dastas is about to be issued, citing and admonishing her to be and appear at the United States Supreme Court.

Now, therefore, the condition of the above obligation is such that if the above named Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza, respondents herein, shall prosecute said appeal to effect, and answer all damages and costs, if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and effect.

TOMAS GARROZI.
DOMINGO PIAZZA,
By His Attorney in Fact, TOMAS GARROZI.
her
JUANA x MARIA GONZALEZ,
mark.
By LUIS MONROIG, *At Her Request.*

Witness:
JOAQUIN P. VALDIVIESO.

JUAN CASTAÑER.
JUAN CORTADA.

On this 20th day of May, 1905, before me there appeared Tomas Garrozi, Juana Maria Gonzalez and Tomas Garrozi as attorney in fact of Domingo Piazzi, and also Juan Castañer and Juan
129 Cortada all of them personally known to me, and they acknowledge- that they have executed the foregoing obligation.

H. H. SCOVILLE,
*Clerk U. S. District Court of Porto Rico,*
By A. AGUAYO,
*Deputy Clerk.*

Approved this 20th day of May, A. D. 1905, to operate as a supersedeas.

CHAS. F. McKENNA, *Judge.*

U. S. OF AMERICA, *District of Porto Rico, ss:*

Juan Cortada and Juan Castañer each of them being duly severally sworn says, that each of them severally by himself is worth the amount of Twenty Five Thousand Dollars over and above his legal debts and liabilities and exemptions under the law in visible property in Porto Rico.

JUAN CASTAÑER.
JUAN CORTADA.

Sworn to before me this 20th day of May A. D. 1905.

A. AGUAYO,
*Deputy Clerk U. S. Court.*

*Entry.*

(May 20th, 1905.)

In the District Court of the United States for Porto Rico.

No. 107.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Now come the defendants herein by their Solicitor C. M. Boerman and present a new bond on appeal in this case.

Whereupon come the sureties on said bond Juan Castañer and Juan Cortada and each for himself acknowledges the execution thereof and after examination of said sureties said bond is approved by the Court and allowed to operate as a supersedeas.

*Petition for Extention of Time to Prepare Transcript of Record.*

(Filed May 23, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

The defendants herein, Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazzi, by their Solicitor Chas. M. Boerman, come now before this Honorable Court and show that the record in the above entitled case is a very voluminous one and that the
130 Clerk of this Court will not be able, even if occupying himself exclusively with this work, to do it within the thirty days prescribed by law; that the transmission of the said transcript to the Supreme Court at Washington will take another two weeks, and it is therefore necessary that the Court grant an extension of time to transcribe and file the record in the above entitled cause in the United States Supreme Court.

The defendants therefore pray that this Honorable Court grant an extension of time of ninety days in order that the Clerk of this Court may be enabled to do his work in a proper way and as prescribed by law.

C. M. BOERMAN,
*Solicitor for Defendants.*

*Order Extending Time for Transmitting the Record.*

(May 23, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

*Order.*

Upon motion of the defendants, it is hereby ordered that the time for transmitting the record to the Supreme Court of the United States in the above entitled case is extended to sixty days.

CHAS. F. McKENNA, *Judge.*

*Statement of the Facts of the Case and of the Rulings of the Court on the Admission or Rejection of Evidence and Exceptions Thereto.*

(Filed June 1st, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI, JUANA MARIA GONZALEZ, and DOMINGO PIAZZI.

Statements of the Facts of the Case and the Rulings of the Court on the Admission of Evidence and Exceptions Thereto.

131 1. Statement of Facts.

1.

The Complainant and defendant were married on the 12th day of May 1886, without any express marriage contract or other circumstance which varried in any respects the application of the legal principles governing community property.

2.

The marital partnership beginning at the time of said marriage continued until said parties were divorced by the decree of the Suprem- Court of Porto Rico on the 9th day of June 1902, for complainant's adultery.

3.

The complainant was about fifteen years old at the time of her marriage; had been a servant in the house of her husband and brounght no property whatever to the marital partnership.

4.

The defendant was about forty six years old at the time of said marriage, and at that time was the owner of various properties, briefly described as follows:

A.—A coffee estate of nearly four hundred acres known as the "Juanita" but subject to a contract of sale of the one half interest to one Pintado.

B.—A mortgage given by Francisca Lluveras for the principal sum of 9,000 (pesos comerciales) which was, at that time practically equivalent to gold.

C.—A mortgage from Simon Fraticelly for the principal sum of 3269.79 pesos. (Mexican)

*D.*—A mortgage given by the brothers Antongiorgi for the sum of $18,000.00 gold.

E.—Two houses in Yauco valued at $2,500.00.

5.

The defendant Garrozi, in his testimony claimed to have had $80,000.00 cash in gold just previous to his marriage, but there is no other credible testimony to substantiate this claim,
132 and all serrounding circumstances are against the probability of his possession of any such sum.

According to Garrozi's own account, when he made the contract with Pintado touching the haciendas "Juanita" in 1881, he brought down from the estate when he came to live in Yauco, about $40,000.00, and before that time he had only loaned out two small sums amounting to $3,000.00, and no other source of income is shown except what he may have received under his contract with Pintado, the amount of which is left entirely indefinite. The evidence further shows that interest on the Lluveras mortgage was only partially paid, and the Antongiorgi mortgage was nor purchased until a short time before his marriage.

Considering this testimony in connection with the statements of the defendant Garrozi in his own testimony, the Court is forced to discredit Garrozi's statement as to the amount of $80,000.00 and that being discredited there is no evidence from which to find any cash assets at the time of the marriage.

6.

That in March, 1887, defendant sold the Fraticelly mortgage for its face value.

7.

That in May, 187, defendant Garrozi sold the Antongiorgi mortgage for its face value.

8.

That in February 1889, defendant Garrozi loaned on a mortgage on the estate "Leonor" $23,680.00 pesos current money which loan was afterwards reduced by payment of $17,300.00.

9.

That in the year, 1889, defendant Garrozi purchased the estate "Maria Antonia" from Gustavo Quintin Ramirez for the sum of $48,000.00 gold, with the right in the vendors to re-purchase within a specified time at the same price.

10.

That in July, 1890, defendant Garrozi loaned on a mort-
133 gage to Encarnacion Ramirez and amount which, inclusive of interest to July, 1895, equalled $23,398.76 current money. Neither the documentary nor the oral evidence clearly discloses the actual amount loaned at the time the mortgage was given, but as near as can be ascertained, the Court concludes that it was approximately equal to $10,000.00 gold.

11.

That in April 1891 defendant loaned on a mortgage to Mersedes Lluveras the sum of $10,470.36 current money.

12.

That in 1892 defendant Garrozi made a final liquidation with Pintado concerning the half interest in the hacienda "Juanita" which he had bargained to said Pintado in 1881, and acknowledged to have received the full sum of $42,000.00 current money for which he had sold said half interest to Pintado.

13.

That in February, 1893, defendant Garrozi sold the remaining half interest in the hacienda "Juanita" for the same amount $42,000.00 current money, payable in seven installments of $6000 each, in April of each of the years 1893 to 1899, inclusive; but the evidence does not disclose at what time any of *this* installments were actually paid.

14.

That in 1894, the original loan of 9000 (pesos comerciales) made to Francisca Lluveras, as stated in the finding numbered 4 (B), had, with interest and change in the unit value, grown to $20,774.78 current money, of which the then owner of the land paid to defendant Garrozi the sum of $5,011.32 in reduction of the mortgage, and defendant Garrozi sold the remainder of the mortgage credit for the remainder of its face value, to wit: $15,763.46.

15.

That in June 1894 the defendant loaned the sum of $15,000.00 current money on the undivided one-half interest of Tomas Olivari
134 in the hacienda "Luisa" and in July of the same year he loaned the sum of $7,000.00 current money upon the other one-half interest of Adela Santoni in the same estate "Luisa."

16.

That defendant Garrozi brought suits in the District Court of Ponce for the foreclosure of his two mortgages on the said hacienda "Luisa," as a result of which said property was adj-dicated to him by the decree of Court dated 4th and 19th of July, 1900, and on the 1st day of August 1900, defendant Garrozi transferred his title to said "Luisa" which he had obtained in said foreclosure suits, to Domingo Piazzi, for a consideration as expressed in deeds of $7200.00 for one undivided half and $6000.00 for the other undivided half which amounts the deeds of conveyance recited were left in the possession of said Piazzi on account of an indebtedness theretofore existing from said defendant Garrozi to Piazzi. The said Piazza afterwards, in the month of August, 1902, transferred the same to defendant Juana Maria Gonzalez, for the expressed consideration of $10,000.00.

17.

That on the same first day of August 1900, the defendant Garrozi transferred to Domingo Piazzi the balance of the mortgage remaining due from Pintado on the estate "Juanita" referred to in finding numbered 13 above, then amounting to $7,200.00 gold for the price of $4,800, which the instrument of assignments recited was left in the hands of said Piazzi in part payment of indebtedness from the defendant Garrozi, and on the 1st day of August 1902, said Piazzi assigned said mortgage credit for a recited consideration of $4,000.00 to the defendant Juana Maria Gonzalez in like manner as the property referred to in the previous finding was transferred.

18.

In December, 1899, said defendant Garrozi transferred to defendant Juana Maria Gonzalez for the recited consideration of $6,000 current money, which was then provincial pesos the two houses referred to in finding numbered 4 (E).

19.

The mortgage given by Mercedes Lluveras referred to in
135 finding numbered 9 was, on July, 31, 1900, transferred by defendant Garrozi to said Domingo Piazzi for a recited consideration of $6,282.22, which said Garrozi acknowledged to have received from Piazzi, and on the same 1st day of August, 1902, said Piazzi, assigned the same to defendant Juana Maria Gonzalez for a recited consideration of $4,000.00.

20.

On the same day, August 1, 1902, said Piazzi transferred to defendant Juana Maria Gonzalez, for a recited consideration of $10,000.00 acknowledged to have been received the said hacienda "Luisa" referred to in finding- numbered 15 and 16, together with another property consisting of two hundred and fifty cuerdas (250) called the Hortensia" the two properties thus forming one hacienda

of seven hundred and seventy five cuerdas, under the name of "Luisa."

21.

On May 28, 1900, the defendant Garrozi transferred to defendant Juana Maria Gonzalez all rights and titles to the plantation "Maria Antonia" referred in finding numbered 9, for the recited consideration of $48,000.00 acknowledged to have been received and on July 1, 1901, said defendant Juana Maria Gonzalez, represented by the defendant Garrozi under a general power of attorney executed to him on May 28, 1900, transferred the same to Gustavo and Quintin Ramirez for the recited consideration of $48,081.18 the said transfer bee- made in pursuance to the right of repurchase reserved by said Gustavo and Quintin Ramirez in the deed of sale which they made to defendant Garrozi.

22.

The Court concludes from these facts that all the foregoing transfers described in findings numbered 16, 17, 18, 19, and 20, were made by the parties thereto, without consideration, with knowledge of whatever rights the complainant may be found to have in said properties as community property of the said marital partnership, and for the fraudulent purpose of defrauding said complainant out of whatever share she might have in said properties. The
136 Court further concludes from these facts that the $48,081.18 alleged to have been received by the defendant Juana Maria Gonzalez from the transfer of the Plantation "Maria Antonia" was in fact received by the defendant Garrozi, who really acted in his own interest while pretending to represent the defendant Juana Maria Gonzalez as her attorney in fact, the interest of the said Juana Maria Gonzalez being at the time entirely fictitious; but that some part of said money was expended or reinvested by the defendant Garrozi in the acquirement of the plantation "Hortensia" and the improvements on the haciendas "Luisa" and "Leonor" after their transfer into the name of Juana Maria Gonzalez.

The Court concludes therefore that the balance remaining in the hand of defendant Garrozi unexpended is approximately $15,000.

24.

That said defendant Garrozi made several trips to Europe during the continuance of his marital partnership, and spent large sums of money by reason thereof, which were, as near as can be determined from his testimony, the following amounts:

| | |
|---|---|
| In 1889 | $10,000.90 |
| In 1890 | 7,000.00 |
| In 1895 | 5,000.00 |
| In 1896–98 | 25,000.00 |
| Total | $47,000.00 |

Said defendant claims in his testimony that these trips to Europe and the expenditure of these large sums of money was rendered necessary by reason of his serious and continued illness. But said testimony is not substantiated by that of any other credible witness, while if true it could have been easily proven by the testimony of some of the physicians who attended him, and who must have had full knowledge of his condition during these times. But even granting that the journeys were necessary to defendant's health, the Court is forced to the conclusion, either that said defendant has exaggerated the amounts expended, or that such extravagant expenditures were not either necessary or reasonable, and hence not
137 a proper charge against the property of the marital partnership.

It seems that twenty five thousand dollars ($25,000.00) would have been a liberal expenditure under the circumstances for a man in defendant's Garrozi condition of life.

The Court therefore concludes that twenty-two thousand dollars ($22,000.00) of the amount should be charged against the separate property of defendant Garrozi.

25.

The defendant Garrozi received in installments from Pintado between the years 1893 and 1899 the sum of $30,000.00 provincial money, under the contract with Pintado referred to in finding numbered 12, but there is no evidence to show on what particular dates any specific parts of said sums were received.

26.

That the capital brought by defendant Garrozi to the marital partnership is therefore found to be as follows:

| | |
|---|---|
| 1. The hacienda "Juanita" which the Court concludes was then reasonably worth | $40,000.00 |
| 2. The mortgage from Francisca Lluveras, value | 9,000.00 |
| 3. The mortgage from Simon Fraticelli | 2,000.00 |
| 4. The mortgage from Antongiorgi | 18,000.00 |
| 5. The two houses and lot in Yauco | 2,500.00 |
| Total | $71,500.00 |

27.

That at the time of the dissolution of the said marital partnership, to wit: on the 9th day of June, 1902, the defendant Garrozi was possessed of the following property:

| | |
|---|---|
| 1. Two houses and a lot in Yauco valued at | $6,000.00 |
| 2. Mortgage credit from Mercedes Lluveras | 6,000.00 |
| 3. Mortgage credit from Encarnacion Ramirez. | 10,000.00 |
| 138 4. The plantation "Luisq" | 25,000.00 |
| 5. The plantation "Leonor" | 15,000.00 |
| 6. Cash remaining from the sale of "Maria Antonia" | 15,000.00 |
| Total | $77,000.00 |

II. *Statement of the Rulings of the Court on the Admission or Rejection of Evidence and Exceptions Thereto.*

1.

On the cross-examination by defendants' counsel of complainant's witness Juan Macini Pietri, the following question was asked "So then it was not by judging the amount of the crop that you gave the value, and it was not by the extent of the land? Your estimate, then, was based simply on what other people said?" in order to show that the witness' testimony was only hearsay. The objection of complainant's counsel to this question was sustained by the court, to which ruling the defendants excepted.

2.

A motion was then made by defendants' counsel to strike all the testimony of this witness referring to the plantations "Leonor" and "Luisa" as being simply hear-say, after the witness had given the following answers to defendants' question: Q. "You have testified something about the plantations "Luisa" and "Leonor." What do you know about those farms?" Ans. "I have testified that the plantation "Luisa" produces a yearly average of 500 quintales, and the plantation "Leonor," about 300 quintales." Q. "How do you know that? Have you been managing these plantations?" Ans. "I know it by what is said." Q. "That is all you know about it?" Ans. "Yes." The Court overruled the motion of the defendants, to which ruling the defendants excepted.

3.

On the direct examination of complainant's witness Marcial Santoni by complainant's counsel, the question was asked:
139 "What is the value of the plantation- "Luisa" and "Hortensia" today "1904?" Defendants objected on the ground that it was too remote in time. The Court overruled the objection, to which ruling the defendants excepted.

4.

On the direct examination of complainant's witness Jorge Massenden, the following question was asked by complainant's counsel: "What was the value of the plantation "Juanita" before he was married in 1886?" Defendants objected on the ground that the witness had not qualified as an expert. The Court overruled the objection, to which ruling the defendants excepted. (The following answer was given to this question by the witness: "This plantation Juanita had a positive value of 25,000 pesos cash.") The whole of the testimony of this witness up to this point was as follows:

(Direct examination.)

(By Mr. HERNANDEZ:)

Q. What is your name?
Ans. Jorge Massenden.
Q. How long have you lived in Yauco?
Ans. For thirty odd years.
Q. How long have you known Garrozi?
Ans. From the year 1882.
Q. Did you know him before that time?
Ans. No.
Q. What was his occupation in 1882?
Ans. He was in the "Juanita."
Q. Was that his property?
Ans. At that time it was his property
Q. What other property did he have in Yauco ? in the year 1882?
Ans. In 1882 I knew only this property, and in 1883 I knew Mr. Garrozi had a house in Rosarie street, Yauco.
Q. Besides that house what other property did he have in 1883?
Ans. I do not know what other property he had.
Q. Did he have any other?
Ans. In a few years he bought a store.
Q. In what year was that?
Ans. I cannot state accurately
140 Q. What property did he have in 1886 before he married?
Ans. Those three only.
Q. What was this house worth at that time?
Ans. At that time it might have been worth about $1,500.
Q. You mean in the current money of Porto Rico?
Ans. No; in gold.
Q. What was the value of the house in current money at that time?
Ans. 2,000 pesos Mexican.
Q. What was the value at that time of the other property he had in Yauco?
Ans. It had a value of 6,000 pesos before the second storry was built, in the same Mexican currency.
Q. When was the second story built?
Ans. After the year 1886.
Q. After his marriage?
Ans. Yes.

5.

The same witness was asked by complainant's counsel "How wealthy is he (meaning Garrozi) to-day?" Defendants objected to this question as being incompetent and calling for an opinion only.

The Court overruled the objection to which ruling the defendants excepted.

6.

A motion to strike the answer to the foregoing question, which was as follows: "He must have at least $150,000," on the ground

that it was an opinion of the witness, was overruled by the Court, to which ruling the defendants excepted.

7.

On the cross-examination by defendants of complainant's witness Alejandro Agostini, the following question was asked: "When you said that the "Luisa" belongs to Tomas Garrozi, are you willing to swear that it was registered in his name?" Complaina-t's objection to this question was sustained by the Court, to which ruling the defendants excepted.

8.

On the direct examination by complainant of complaina-t's
141 witness Gustavo Nin, the following question was asked: "What — this plantation (referring to Juanita") worth before his (referring to Garrozi) marriage?" Defendants objected on the ground that the witness had not qualified as an expert. (The following a-swer was given to this question by the witness: "About 20,000 pesos.") The objection was overruled by the Court, to which ruling the defendants excepted. "The whole of the testimony of this witness up to this point was as follows:

(Direct examination.)

(By Mr. HERNANDEZ:)

Q. What is your name?
Ans. Gustavo Nin.
Q. Where do you live?
Ans. In Yauco.
Q. How long have you lived there?
Ans. I was born there.
Q. Do you know Tomas Garrozi.
Ans. Yes.
Q. How long have you known him?
Ans. Since he came to Porto Rico.
Q. Did you know his father.
Ans. I knew him when I was a boy.
Q. Have you had any business with Garrozi.
Ans. Yes.
Q. Before his marriage?
Ans. No; but afterwards.
Q. Before his marriage, what property did he have?
Ans. A coffee plantation, a wooden house in Yauco and two masonry houses there.
Q. What plantation was that?
Ans. The "Juanita," the one belonging to Pintado now.

9.

A motion was made by the defendants to strike this witness Nin's testimony as to the valuation after he gave to the question: "You

base your calculation on the price you heard Mr. Pintado paid for it? Do, You? The following answer: "Yes," he gave it to Pintado in liquidation for 45,000 pesos "And to the question: "And that is what you base your calculation on, is it?", The following answer; "As he gave it in liquidation for that price I suppose it is worth more than half of that." The Court overruled the motion to which ruling the defendants excepted.

10.

Complainant's witness Manuel Catalá Dueño was asked by the complainant the following question: "What was the value
142 of the plantation "Juanita" from the year 1881 to 1885?", "to which question the defendants objected on the ground that the witness had not qualified as an expert. The Court overruled the objection to which ruling the defendants excepted. (The following answer was given to this question by the witness: The plantation "Juanaita" in the year 1881 had a value of 40,000 pesos, because this was the value they agreed upon when the transaction of the partnerchip was made.")

11.

The same witness was asked by complainant the following question: "What was the value of the plantation "Juanita" in cash at *tah*t time?", to which defendants objected on the ground that the witness had not qualified as an expert. The Court overruled the objection to which ruling the defendants excepted. (The following answer was given to this question by the witness: "In my judgment from twenty to twenty five thousand pesos.")

12.

The same witness was asked by complainant the following question: "What was the calue of the cock-pit?", to which defendant objected on the ground that the witness had not qualified as an expert. The Court overruled the objection, to which ruling the defendants excepted. (The following answer was given to this question by th*w* witness: "The cock-pit may have been worth from six to eight hundred pesos.")

13.

The same witness was asked by complainant the following question: "what was the value of the other wooden house that he had?" To which defendants objected on the ground that the witness had not qualified as an expert. The Court overruled the objection, to which ruling the defendants excepted. "The following answer was given to this question by the witness: "2,500.00" pesos.)

14.

The same witness was asked by complainant the following question: "What was the value of the other two masonry houses?, To

which defendants objected on the ground that the witness
143 had not qualified as an expert. The Court overruled the objection, to which ruling the defendants excepted. "The following answer was given to this question by the witness: "from four to five thousand pesos.")

15.

The same witness was asked the following question "What was the value of the other property?" "He (meaning Garrozi) had?," to which defendants objected on the ground that the witness had not qualified as an expert. The Court overruled the objection to which ruling the defendants excepted. (The following answeer was given to this question by the witness: "The house located in the street whose name I do not remember, was worth 600 pesos"),. The whole of the testimony of this witness up to this point was as follows:

(Direct examination.)

(By Mr. HERNANDEZ:)

Q. What is your name?
Ans. Manuel Catalá Dueña.
Q. What is your occupation?
Ans. Judicial agent.
Q. Do you live in Yauco.
Ans. Yes, for twenty one years.
Q. When did you move to Yauco?
Ans. In the year 1881.
Q. Do you know Garrozi?
Ans. Yes.
Q. Since when?
Ans. Since my arrival in Yauco.
Q. Do you know his property interest and business?
Ans. Yes.
Q. Have you be*ing* his agent on different occasions?
Ans. I have acted as his agent on one occasion. I was employed by him to take some account at his house.
Q. As such agent and by reason of such employment have you had opportunity to know his financial standing, and become familiar with his interest?
Ans. To a great extent.
Q. When was Mr. Garrozi married, do you remember?
Ans. In the month of May 1886.
Q. Before that time what part did you take in his property interest?
An*d*. I took no interest in his property interests. But as protocol clerk of the Notary at Yauco, I intervened in the documents executed by him at Yauco.
144 Q. And you had opportunity to see the title deeds that he had before his marriage?
Ans. Yes.
Q. What property did he have before his marriage?

Mr. BOERMAN: I object as the question calls for an answer that is not the best evidence and is simply hearsay. There are writings in existence showing these properties.

Ans. He owned an estate in the Barrio of "Aguas Blancas."

Q. What was that estate?

Ans. It was a coffee hacienda called "Juanita," which he had turned over to Isidoro P-ntado to have it liquidated, and after being liquidated for the price put upon it, the property then belonged to both of them.

Q. Did you see the title deeds to that property?

Ans. I have seen them many times., and I have had opportunities of taking copies from it and drawing instruments in regard to the same matter. He had besides a house; I do not remember the name of the street; besides that he had a masonry house and another wooden house next to the first one where they had a cock-pit; he had besides a mortgage on the estate "Reustaurado" belonging to Juan Antonio Negron for the amount of 10,000 pesos or more.

Q. Did you see the title dee-s to this property?

Mr. BOERMAN: I object to it as hearsay and secondary and not the best evidence.

Q. Have you had in your hand and had occasion to read the title deed to these properties?

Mr. BOERMAN: I object to this class of evidence as it is incompetent is purely hearsay and secondary.

Ans. I had an opportunity of *seen* the ti-les referring to the plantation "Juanita" and of the house of masonry in Rosario Street, and the title of the mortgage on the plantation "Restaurado," but as to the others I have not seen them.

Q. As to what have you not seen?

Ans. The house where the cockpit was, and Mr. Garrozi had besides two masonry houses in Borinquen St. masonry buildings, one of which a second story was added.

Q. In what notarial office were you in Yauco?

145 Ans. In the only one then existing, that of Don Juan Zacarias Rodriguez.

Q. *Where* there any more title deeds in that office of property of Mr. Gar-ozi?

Ans. I do not know. According to the time I was there there were no more.

Q. What time were you there?

Ans. From 1881 to 1884 and 1885.

Q. If there had been any other title deeds would you have seen them?

Ans. Yes.

Q. What was the value of the plantation "Juanita" from the year 1881 to 1885?

Ans. The plantation "Juanita" in the year 1881 had a value of 40,000 pesos, because this was the value they agreed upon when the transaction of the partnership was made.

Q. Was that a cash value or time payments?

Ans. It was not a cash value as it was agreed upon as the price to be paid in a certain number of years. It was what was due on it.

Q. In how many years?

Ans. In ten years.

Q. What was the value on the plantation "Juanita" in cash at that time?

Ans. In my judgment from twenty to twenty five thousand pesos.

Q. Why?

Ans. For the reason that its value had to be paid in a number of years. The sale was by installments.

Q. What was the value of the cockpit.

Ans. The cockpit may have been worth from 6 to 800 pesos.

Q. How do you know it?

Ans. If I remember rightly, Mr. Garrozi sold the house at this price to Mr. Antonio Franceschi.

Q. What was the value of the two other masonry houses?

Ans. From four to five thousand pesos.

Q. How do you know it?

Ans. This was the assessment for the collection of the taxes, and it was made at this price, because later on when Mr. Garrozi transferred these houses to Maria Gonzalez, one of then had been reconstructed, making a two story house of it, and he did it for the sum of 6,000 pesos.

Q. What was the value of the other property he had?

Ans. The house located in the street whose name I do not
146 remember was worth six hundred pesos.

16.

The same witness was asked by complai-ant the following question: "How much money in cash (meaning Garrozi)?" To which question the witness gave the following answer: "As proceeding from the "Juanita," he should have $28,000." Defendants then moved to strike out the answer as being an opinion of the witness, which motion was overruled by the Court and the defendants excepted.

17.

The following questions were asked of complainant's witness Juan Fernandez on direct examination: Q. "What is the title of the collection entered in 1897?2 Ans. "On April 20th 6,000 pesos, provincial or Mexican, from Isidoro Pintado." Q. "What other collection- were made in that year?" Ans. "May 28th, 1898, 1,000 pesos." Q. "Of what items is this collection of 6,000 made up?" Ans. "The collection from Pintado and on other from Mrs. Mercedes Rivera." Q. "What is the character of that entry of 6,000 pesos?" Ans. "The entry is a credit for the reason that Pintado made a payment on account." Q. Please refer to the other collection of 1000 pesos?"

The Court overruled the objection, to which ruling the defendants excepted. (The following answer was given to this question by the

witness.) "I cannot determine, but we can see here (meaning in the book) the amounts that refer to the provisions.

21.

Complainant's witness Fancisco Negroni y Lucca was asked by complainant the following question: "What was the value of the hacienda "Juanita?" Defendants objected to this question as being too remote. The Court overruled the objection, to which ruling the defendants excepted. (The following answer was given to this question by the witness: "It was worth 40,000 pesos.")

22.

The same witness was asked by complainant the following question "How many quintals did the hacienda "Juanita" pro-
147 duce about the year 1880 and from then to 1886?" Defendants objected to this question as being too remote in time. The Court overruled the objection, to which ruling the defendants excepted. (The following answer was given to this question by the witness: "From 350 to 400 quintals.")

23.

The same witness was asked by complainant the following question: "Has Tomas Garrozi increased his wealth since his marriage in 1886?" Defendant objected to this question on the ground that it calls for an opinion of the witness. The Court overruled the objection, to which ruling the defendants excepted. (The following answer was given to this question by the witness: "Yes, after his marriage he increased it.")

24.

The defendants offered in evidence the birth certificate of Juana Maria Gonzalez, co-defendant herein, by which it was intended to show that she is not a sister of the other defendant Tomas Garrozi, as alleged and claimed by the complainants. The Court refused to admit said birth certificate, to which ruling the defendants excepted.

25.

Defendant Tomas Garrozi, as a witness in his own behalf, was asked by his counsel the following question: "When you got married to Juana Dastas, did she bring in any marriage portion to the matrimony—any property?" Complainant objected to this question and the Court sustained the objection, to which ruling the defendants excepted. (The following answer was given to this question by the witness: "Not a single cent. I had to buy her a dress and clothes, even to the stockings.")

26

The same witness was asked by defendants' cou-sel the following question: "During your marriage with her did she inherited any

property from any one?" To which question the complainant objected and the Court sustained the objection. To which
148 ruling the defendants excepted. (The following answer was given to this question by the witness: "No, not a cent, from any person whatsoever.")

27.

The same witness was asked by defendants' counsel the following question: "Did she (meaning the complainant) receive any gifts from any person except yourself (meaning the defendant Garrozi)?" Complainant's objection to this question was sustained by the Court, to which ruling the defendants excepted. (The following answer was given to this question by the witness: "No, not that I know of.")

28.

The defendants offered in evidence a certificate of the registrar of Property of the city of Ponce as to a mortgage upon the plantation "Rufina" ceded to Mr. Franceschi by Garrozi, in order to show the amount of his property before his marriage. Complainant objected to the admission of said certificate and the Court sustained the objection, to which ruling the defendants excepted.

29.

The witness Francisco Paoli on behalf of the defendants was asked by defendants' counsel the following question: "Were you present in the year 1886 at any such inventory (referring to inventory made at the time of the marriage)?" Ans. "Yes."

Q. Do you remember his marriage?" Ans. "Yes." Q. Was that before or after his marriage?" Ans. "Yes." Q. Before or after?" Ans. "Before." Q. Was it in the beginning of the year?" Ans. "I cannot state exactly whether it was in the beginning of April or of May." Q. How did you come to be present at that inventory?" Ans. "I had the necessity of going to see Garrozi in order to obtain some money from him and when I reached the house I found that he was busy in making this inventory with Mr. Luis Garcia, of his properties." Q. "Did you take any part in the making of that inventory?" Ans. "They asked me to take a seat and I saw that they were making an account in regard to some money."

Q. "Did you see what amount of money it was?" Ans. I
149 saw that they counted and put down on a paper 80,000 and some odd dollars, in gold money it was." Q. "Did you see that money?" Ans. "Yes." Q. "What did you do then?" Ans. "I was standing there waiting until they finished with the business and then they referred to other properties, such as mortgages, up to the amount of 200,000 pesos, and as I saw that it was getting late and that they were busy I retired." Complainant objected to this testimony and made a motion to strike it as hearsay. Said motion was sustained by the Court, to which ruling the defendants excepted.

30.

On cross examination the same witness was asked by complainant the following question: Q. "Did you count the money?" Ans. "No. sir Luis Garcia counted it. They were counting it on the table and when they had finished counting it they made a note of it and it amounted to 80,000 pesos." Complainant moved to strike this answer and the Court sustained the motion, to which ruling the defendants excepted.

31.

The same witness was asked the following question on cross-examination: Q. "So what you know about that amount is what you have heard Garrozi say about it, is it?" Ans. "Yes," and I also saw the money on the table, and as they counted it I heard them and they stated the amounts until they reached the sum of 80,000 pesos, and it was in gold money." Complainant moved to strike this answer and the Court sustained the motion, to which ruling the defendants excepted.

32.

Complainant moved to strike the testimony of this witness and the Court sustained the motion except as to persons present, to which ruling the defendants exce-ted.

33.

The same witness was asked the following questions by complainant: Q. Did you see the whole inventory?" Ans. "I saw when the inventory amounted to some 200,000 pesos and then I re-
150 tired." Q. "How did you know it was for that sum?" Ans. "Because I heard them saying "80,000 dollars in gold," 90,000 dollars in property;" various mortgages and other credits." The complainant moved to strike this testimony and the Court sustained the objections, to which ruling the defendants excepted.

34.

Complainant offered in evidence a certificate of the Registrar of Property of San German with its translation. The introduction of said certificate was objected to by the defendants for the reason that it was immaterial irrelevant and incompetent and does not show the properties possessed by Garrozi at the date of his divorce from the complainant Juana Dastas, but properties owned by him at a former date. This objection of defendants was overruled by the Court, to which ruling the defendants excepted.

Which are all the rulings on the testimony made by the Court and the exceptions thereto made by the defendants and insisted upon as errors.

The said statement of facts and of the rulings of the Court with exceptions of defendants to such ruling, is hereby certified to by this Court to be a correct and true statement of such.

CHAS. F. McKENNA, *Judge.*

UNITED STATES OF AMERICA, *District of Porto Rico, ss:*

I, H. H. Scoville, Clerk of the District Court of the United States for Porto Rico do hereby certify that the foregoing is a true and correct transcript of the proceedings, pleadings orders, and decrees etc. had, filed and entered in the above entitled suit, and of record in this Court.

Witness, my official signature and the seal of said Court at Ponce, Porto Rico, this 27th day of June, 1905 and the 129th of the Independence of the United States *fo* America.

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE, *Clerk.*
By A. AGUAYO,
*Deputy Clerk.*

151 [Endorsed:] No. —. In the District Court of the United States for Porto Rico. Juana Dastas *vs.* Tomas Garrozi *et al.* Transcript of Record.

152 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Juana Dastas and F. H. Dexter, her Attorney, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for Porto Rico, wherein Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazzi are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Chas. F. McKenna, Judge of the District Court of the United States for Porto Rico, this 22 day of May, A. D. 1905, and of the independence of the United States the one hundred and twenty-ninth.

CHAS. F. McKENNA,
*United States District Judge for Porto Rico.*

Attest:

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE,
*Clerk District Court of U. S. for P. R.*

*Return on Service Writ.*

UNITED STATES OF AMERICA,
*The District of Porto Rico, ss:*

I hereby certify and return that I have served the annexed Writ on the therein-named Francis H. Dexter as Attorney for Juana Dastas

by handing to and leaving a true and correct copy thereof with him personally at Mayaguey in said District on the 27 day of May, A. D. 1905.

H. S. HUBBARD,
*U. S. Marshal,*
JOHN L. HAAS, *Deputy.*

153 [Endorsed:] In the District Court of the United States for Porto Rico. Juana Dastas *vs.* Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazzi. Citation. Marshal's fees 1 service $2.00.

154 In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Transcript of the Motion for a Receiver and Injunction, Order Appointing a Receiver, etc., Order Designating Receiver, Motion for the Discharge of the Receiver and Entries as to Same.

*Motion for Receiver and Injunction.*

(Filed November 3, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Motion for Appointment of Receiver and an Injunction.

To the Honorable Chas. F. McKenna, Judge:

Your petitioner, complainant Juana Dastas, respectfully represents that since the institution of the above entitled cause it has come to her knowledge that defendant Tomas Garrozi is managing and controlling the properties described in the bill of complaint herein, and which, as alleged in said bill of complaint, have been by him fraudulently transferred and assigned to defendants Juana Maria Gozalez, in whose name the same are now inscribed in the registry of property.

Complainant states that, notwithstanding the inscription of these properties in the books of the registry in the name of defendant Juana Maria Gozalez, defendant Garrozi is the actual and real owner thereof and he is collecting the fruits, rents, profits and interest accruing therefrom.

Complainant states that since the fraudulent transfers set forth in the bill of complaint, defendant Garrozi has no other available property subject to execution in this district and that, he, prior to the

bringing of this suit, and ever since then has disposed of and concealed all of his available property in such manner as to place
155 it beyond the reach of process; and as to the real estate and mortgage credits in said bill of complaint described, other than the sugar plantation "Maria Antonia" for which he received in cash the sum of Forty Eight Thousand Dollars ($48,000-), said defendant Garrozi is and has been since the institution of this suit deriving all the profits, proceeds, rents and interests therefor from and has been secreting the same so as to hinder and delay complainant in the collection of her just claim herein or of any decree which may be entered herein in her favor against said defendant Garrozi.

Complainant states in particular that the coffee plantation denominated "Luisa" (but composed of the two properties Luisa and Hortensia) has produced a crop of coffee this year of more than four hundred (400) quintals, and defendant Garrozi has begun to remove the said crop upon said property for the purpose of appro-priating it to his own use.

Complainant further states that the superintendent or "Mayordomo" of the said plantation is Don José Ocasio who is employed by defendant Garrozi and who is mismanaging said plantation in pursuance of the said wrongful and fraudulent design of the said Garrozi in order to deprive complainant of her due and legal rights in the said property.

Complainant further states that the plantation "Leonor" is also in charge of defendant Garrozi, by and through his employee Vicente Antonini, and the said defendant Garrozi is and has been since the institution of this suit collecting the crops of said plantation and appropriating the proceeds thereof to his own use; and the crops and proceeds of both of said properties are now being misappro-priated in pursuance of the fraudulent design of defendant Garrozi as aforesaid and for the purpose of squandering and misappropriating the proceeds and profits thereof and placing them beyond the reach of the process of this Court. Complainant states that there is now upon the said plantation "Leonor" a crop of coffee of at least two hundred (200) quintals.

156 The said coffee is worth approximately twelve dollars a quintal ($12) and therefore the value of both crops is approximately seven thousand two hundred dollars ($7,200). which the said defendant Garrozi is endeavoring to collect by proceeding immediately to the gathering of all of the said coffee and the sale thereof for his own use and benefit.

Complainant further states that the interest upon the mortgage credits "Juanita" and "Mercedes" is and has been collected by defendant Garrozi and is being secreted by him so as to place it beyond the reach of the process of this Court so that it may not be subject to complainant's claim.

Complainant further states that defendant Garrozi has wrongfully and fraudulently made certain arrangements with the mortgagors of said mortgages in by which he intends to collect the same and appropriate the same to his own use in fraud of complainant's rights in the same.

Complainant avers that defendant Garrozi is collecting rents and

incomes from the houses in Yauco described in the bill of complaint as well as from other sources, all of which are being secreted and set apart for the purpose of defeating complainant's right and making ineffective any decree of this Court in her favor.

Complainant states that unless a Receiver is appointed by this Honorable Court to take charge of all of the properties described in the bill of complaint, as well as of other and further properties and assets claimed and owned by defendant Garrozi, such properties will be greatly wasted and depreciated, as well as subjected to many fictitious and fraudulent claims and liens which said defendant Garrozi is about to place thereon and further, the said defendant Garrozi will thus confiscate and place beyond the reach of the process of this Court the income, interest and profits of the said properties and assets aforesaid, one half of which rightfully belong to complainant.

Complainant further states that she has reason to believe that defendant Juana Maria Gonzalez, acting under the fraudulent and wrongful direction and control of defendant Garrozi, is about to enter into and make certain simulated and fraudulent mortgages and conveyances of the properties described in the bill of complant, in which complainant has an interest, in order to embar-ass complainant in the collection of any decree which may be rendered in her favor herein and for the purpose of endeavoring to avoid the annulment of the fraudulent transfers set forth in the bill of complaint herein.

Complainant states that unless an injunction is issued to and against Juana Maria Gonzalez, enjoining and restraining her from transferring, mortgaging, or otherwise encumbering said
157 property during the pendency of this suit, complainant's rights will be wholly lost and destroyed and this suit and any decree rendered therein will prove ineffectual.

Complainant therefore prays that a Receiver be appointed by this Honorable Court to take charge of and manage all of the properties of defendant Garrozi, of all kinds and description, and to care for the same under the orders of this Court during the pendency of this suit; to collect all profits arising from the said properties or the rents, interest or income therefrom; to proceed diligently to the collection of all mortgages and other indebtedness due defendant Garrozi from all sources whatsoever; and to hold all moneys assets and properties so received and held by him, the said Receiver, subject to the orders and decrees of this Court herein. And further, that a temporary injunction issued directed to defendants Juana Maria Gonzalez, enjoining her from selling, mortgaging or otherwise transferring or encumbering any of the properties, mortgages or other assets described in the bill of complaint, in any manner or form whatsoever, until the further order of this Court.

As to such Receiver, he shall have the usual powers of Receivers appointed to preserve property pending litigation and to do all such acts as may be necessary thereto in order to prevent misappropriation, loss or waste.

F. H. DEXTER,
*Solicitor for Complainant.*

Juana Dastas, being duly sworn upon her oath, says that the facts set forth above are true.

This 31 day of October, 1904.

Subscribed and sworn to.

M. ALBERTO SALICRUP, (*Notary.*)

*Order Appointing a Receiver, Granting Injunction, etc.*

(November 7th, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Order Appointing a Receiver, Granting an Injunction, etc.

On this 7th day of November, 1904, appear in open court in the City of San Juan, complainant by her Solicitor F. H. Dexter,
158 and defendants by their Solicitor C. M. Boerman.

The motion of complainant heretofore filed, praying for the appointment of a Receiver and the granting of an injunction as incident thereto having been presented and fully argued by Counsel and the Court having considered the same and the affidavits in support thereof and in opposition thereto; it is now ordered that such motion be granted and that a Receiver shall be appointed. On or before the 11th of November, 1904, the parties may agree upon such a Receiver but in the event that they are unable or fail to agree on such Receiver, the Court will then name the Receiver.

Such Receiver when appointed shall take the usual oath of receivers and shall give bond to guarantee the faithful performance of his duties as such in the sum of Ten Thousand Dollars ($10,000).

An injunction bond in the sum of one thousand dollars ($1,000) shall be given by complainant in the usual form.

The said Receiver shall take charge of all the porperties described in the Bill of Complaint herein, and shall carefully and prudently manage the same during the period of his administration. He shall properly cultivate, care for and collect the crops upon the plantation "Luisa" consisting of the property known as "Luisa" and "Hortencia," and shall also take charge in a similar manner of the estate known as "Leonor" described in the Bill of Complaint. He shall further collect the mortgage credits and interests thereon as described in the Bill of Complaint, and shall pay all taxes and other legitimate expenses that may be proper in connection with the due and orderly administration of his duties as such Receiver, but all extraordinary or unusual expenditures must first be authorized by the Court. Said Receiver shall have authority to employ such assistants, "mayordomos" or other employees as may *be* reasonably be necessary for the care of the said estates and the administration of his trusts. He shall also collect all rents and income except as hereinafter provided.

It is ordered that defendant Juana Maria Gonzalez may
159 continue residing in the house in which she is now living, for which she shall pay no rent, until the further order of this Court, but neither the said defendant Juana Maria Gonzalez nor the defendant Tomas Garrozi or any person, whether acting under them or in their behalf or otherwise, shall interfere in any *am*nner with the Receiver or his assistants or employees in the administration and care of the said estates or in the discharge of his duties as such Receiver.

Defendant Juana Maria Gonzalez and the said defendant Tomas Garrozi and all persons acting under them or in their behalf or otherwise, are hereby enjoined from transferring, selling, encumbering or other otherwise disposing of any of the property or mortgage credits mentioned in the said bill of complaint.

The said Receiver shall also make an investigation for the purpose of making an inventory of all properties and assets of defendant Garrozi and shall with least practicable delay make return of schedule and appraisement to the Court.

The Receiver shall sell at the best price obtainable in the market, the coffee or other produce of the said estates; he shall diligently attend to the culivation of future crops pending his administration and he shall deposit all money received by him as such Receiver, in either the Credito y Ahorro Ponceño, or the banking house of De Ford and Company in Ponce for the safe keeping thereof and he shall have the right to draw thereon by check for such ordinary expenditures as may be necessary for the management and preservation of the said properties and assets or for such other sums as may be authorized by this Court.

Defendant Garrozi is hereby specially enjoined from interfering with the administration of said properties and assets in any *am*nner whatsoever, except as may be permitted or required by the Receiver for the benefit of the estates or properties under his charge.

The Receiver shall make semi-annual reports of the administration of his trust and at such other time as the Court or the Judge thereof shall order.

CHAS. F. McKENNA, *Judge.*

160 *Order Designating Receiver.*

(Filed Nov. 11th, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Order Designating Receiver.

The parties to the above entitled cause appearing in open Court the 11th day of November, 1904, at the city of San Juan, by their

respective Solicitors, F. H. Dexter and C. M. Boerman, and having agreed upon Samuel W. Eckman, Esq; as Receiver, the said Samuel W. Eckman is now appointed Receiver, of all the properties and assets described in the Bill of Complaint and all properties and assets belonging to Tomas Garrozi.

The said Receiver shall take the usual oath of office, as such, and, within ten days from this date he shall execute before the Clerk of this Court a bond for ten thousand dollars ($10,000.) provided for in the order made Nov. 7th 1904.

Defendants Tomas Garrozi, and Juana Maria Gonzalez are hereby required to *run* over to the said Receiver all books, accounts, deeds, and papers relative to the administration of the estates described in the Bill of Complaint or relating to the property and assets of Tomas Garrozi, as well as all implements tools, cattle and personal property of all kinds and description belonging to defendant Garrozi and use- upon any of the estates described in the said Bill of Complaint and neccessary for the administration thereof.

CHAS. F. McKENNA, *Judge.*

*Motion for the Discharge of Receiver.*

(Filed May 5th, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Motion for the Discharge of the Receiver.

Now come the defendants, by Chas. M. Boerman, their Solicitor, and show to this Honorable Court that a decree adjudging
161 the complainant herein a certain sum of money to be paid by the defendants, has been entered in this Court on the 19th day of April, 1905; that an appeal from said decree has been allowed by this Court and a sepersedeas bond in the sum of Twenty Five Thousand Dollars ($25,000.) have been approved and filed in this Court to respond for the said sum decreed to be due to the complainant and all her costs and damages in that behalf; and that there is no more necessity for the continuance of the receivership in this suit.

Therefore moves this Honorable Court that the Receiver hereto appointed herein shall be ordered to render his final account and to be dischsrged of his duties as Receiver.

C. M. BOERMAN,
*Attorney for Defendants.*

*Entry on Journal of Court.*

(May 5, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI ET AL.

Now come the defendants herein by their Solicitor C. M. Boerman and file a motion for the discharge of the Receiver. Whereupon the complainant is granted until May 6, 1905, to prepare an answer to said motion.

*Entry on Journal of Court.*

(June 6, 1905.)

In Equity.

JUANA DASTAS
*vs.*
TOMAS GARROZI.

The petition for the discharge of the receivership herein is heard and overruled, to which the defendants except. Whereupon said defendant files a motion to set aside an order heretofore made, allowing the Receiver's expenses and fees, and said motion being heard is overruled, to which the defendant excepts. Whereupon the Court makes the following order, to wit:

162 *Order.*

The resignation of the Receiver in the above entitled action, Mr. Samuel W. Eckman, having been presented to the Court, and the final accounts of said receiver having been filed and approved by order of the Court, on motion of Albert F. Hunt, Jr., attorney for the receiver, it is ordered that the resignation of said receiver, Mr. Samuel W. Eckman, be accepted and that he be relieved from all further duties in connection with said receivership.

*Order Appointing C. A. Teller, Receiver.*

(June 9th, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
*vs.*
TOMAS GARROZI.

*Order.*

It appearing that an order was entered herein on Tuesday, June 6th, 1905, accepting the resignation of Samuel W. Ecman as Receiver of the properties of the defendant Tomas Garrozi, and

It further appearing that an order was entered overruling the petition of said defendant to discharge the receivership, and the parties hereto having failed to agree upon the appointment of any one as said Receiver, and

It further appearing that there is no one in charge of said properties, and that great damage is likely to ensue on account thereof, the Court now hereby appoints C. A. Teller as such Receiver, who, upno duly qualifying by giveing a bond of Ten thousand Dollars, (10,000.00) will take charge of the Administration of said properties turned over by S. W. Ecman, the former Receiver herein.

CHAS. F. MACKENNA, *Judge.*

UNITED STATES OF AMERICA, *District of Porto Rico, ss:*

I, H. H. Scoville, Clerk of the District Court of the United
163 States for Porto Rico do hereby certify that this is a true and correct transcript of the motions, orders and entries filed, entered and of record in the above entitled cause in reference to the appointment of a Receiver in said cause.

Witness my official signature and the seal of said Court at Ponce, Porto Rico, this 27th day of June, 1905 and in the 129th of the Independence of the United States of America.

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE,
*Clerk U. S. District Court of Porto Rico.*
By A. AGUAYO,
*Deputy Clerk.*

[Endorsed:] In the District Court of the United States for Porto Rico. Juana Dastas *vs.* Tomas Garrozi *et al.* Transcript of motions, orders, entries in reference to the appointment of a Receiver.

Endorsed on cover: File No. 19,829. Porto Rico D. C. U. S. Term No. 327. Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazzi, Appellants, *vs.* Juana Dastas. Filed July 5th, 1905. File No. 19,829.